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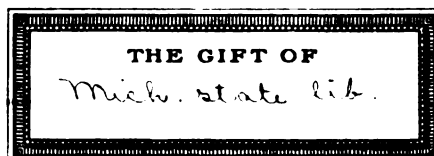
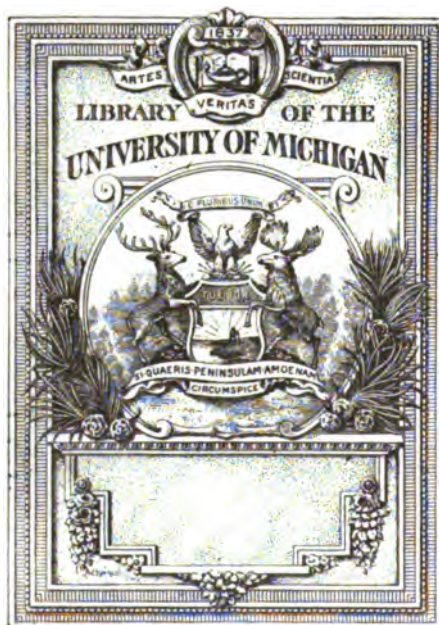
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ANNUAL REPORT
OF THE
ATTORNEY GENERAL

OF THE
STATE OF MICHIGAN

FOR THE
FISCAL YEAR ENDING JUNE 30, A. D. 1911.

FRANZ C. KUHN
ATTORNEY GENERAL.



BY AUTHORITY.

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1911

ATTORNEY GENERAL'S OFFICE.

FRANZ O. KUHN, Attorney General.

HENRY E. CHASE, Deputy Attorney General.

ASSISTANTS.

CHARLES W. MCGILL.

THOMAS A. LAWLER.*

GEORGE S. LAW.

ARTHUR P. HICKS.

FRANCIS T. MCGANN.

CLERKS.

FRED H. HADRICH.

HENRY G. CASSEY.

* Chief law clerk.

ATTORNEYS GENERAL OF THE STATE OF MICHIGAN SINCE 1836.

APPOINTED.

DANIEL LE ROY	July 18, 1836-1837
PETER MOREY	March 21, 1837-1841
ZEPHANIAH PLATT	March 4, 1841-1843
ELON FARNSWORTH	March 9, 1843-1845
HENRY N. WALKER	March 24, 1845-1847
EDWARD MUNDY	March 12, 1847-1848
GEORGE V. N. LOTHROP	April 3, 1848-1850

ELECTED.

WILLIAM HALE	1851-1854
JACOB M. HOWARD	1855-1860
CHARLES UPSON	1861-1864
ALBERT WILLIAMS	1865-1866
WILLIAM L. STOUGHTON	1867-1868
DWIGHT MAY	1869-1872
BYRON D. BALL (a)	1873-1874
ISAAC MARSTON	April 1, 1874-1874
ANDREW J. SMITH	1875-1876
OTTO KIRCHNER	1877-1880
JACOB J. VAN RIPER	1881-1884
MOSES TAGGART	1885-1888
STEPHEN V. R. TROWBRIDGE (b)	1889-1890
BENJAMIN W. HUSTON	March 25, 1890-1890
ADOLPHUS A. ELLIS	1891-1894
FRED A. MAYNARD	1895-1898
HORACE M. OREN	1899-1902
CHARLES A. BLAIR	1903-1904
JOHN E. BIRD (c)	1905-1910
FRANZ C. KUHN	June 7, 1910-1911

(a) resigned April 1, 1874. Isaac Marston appointed to fill vacancy.

(b) resigned March 25, 1890. Benjamin W. Huston appointed to fill vacancy.

(c) resigned June 6, 1910. Franz C. Kuhn appointed to fill vacancy.

ANNUAL REPORT, 1911.

STATE OF MICHIGAN,
Attorney General's Office,
Lansing, July 1, 1911.

To the Legislature of the State of Michigan :

In compliance with the law, I have the honor herewith to present the annual report of the business of this department for the fiscal year ending June 30, 1911, including official opinions and an abstract of the official reports of the prosecuting attorneys of the counties of the State, showing the number of prosecutions, convictions, acquittals, etc.

Four indexes are included: a "Table of Cases" an "Index of Names of Opinions," "Subjects of Opinions," and "General Index to Report."

The various matters contained in this report are arranged as Schedules "A" to "S," inclusive and are classified as follows:—

SCHEDULE A.—Statement of criminal cases, habeas corpus cases and an extradition case.

SCHEDULE B.—Statement of mandamus cases.

SCHEDULE C.—Statement of quo warranto cases.

SCHEDULE D.—Statement of chancery cases in State courts and cases in equity in United States courts.

SCHEDULE E.—Statement of proceedings for the collection of escheated estates.

SCHEDULE F.—Statement of inheritance tax proceedings.

SCHEDULE G.—Statement of proceedings relative to insane persons confined in State hospitals containing: (a) statement of money collected and paid to the State, through the efforts of attorney general, with the co-operation of medical superintendents of the various hospitals, auditor general and judges of probate, as re-imbursement to the state for the support of certain insane persons in State hospitals, (b) statement of status of proceedings for reimbursement.

SCHEDULE H.—Statement of assumpsit cases, ejectment and removal cases, trespass on the case proceedings, and miscellaneous cases.

SCHEDULE I.—Statement of amounts recovered as reimbursements for “costs of suits.”

SCHEDULE J.—List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved; and statement of the approval fees received and paid to state treasurer.

SCHEDULE K.—Summary-statement covering, approximately, all amounts collected and paid to the state through the Attorney General, during the fiscal year ending June 30, 1911.

SCHEDULE L.—Official opinions of the attorney general.

SCHEDULE M.—Abstract of the semi-annual reports of the prosecuting attorneys for the fiscal year ending June 30, 1911, and

SCHEDULE N.—Recapitulation of the semi-annual reports of the prosecuting attorneys for the fiscal year ending June 30, 1911, and

SCHEDULE O.—List of prosecuting attorneys, in office, June 30, 1911, with names of county seats and postoffice addresses.

SCHEDULE P.—Index—Table of cases.

SCHEDULE Q.—Index of names of opinions.

SCHEDULE R.—Index to subjects of opinions.

SCHEDULE S.—Index—General index to report.

Respectfully submitted,

FRANZ C. KUHN.

Attorney General.

F H H h.

SCHEDULE "A."

Statement of criminal cases, habeas corpus cases and an extradition case.

CRIMINAL CASES DISPOSED OF-Supreme Court.

People vs. Peter Kemppainen. Certiorari to Houghton. Bastardy. Submitted, June 27, and judgment and proceedings abated, November 11, 1910. 163 Mich. 186.

People vs. William Dunnigan. Error to Hillsdale. Murder. Submitted on briefs, October 21, and affirmed, November 11, 1910. 163 Mich. 349.

People vs. Laura A. Stewart. Error to Lenawee. Arson. Argued and submitted, November 1, 1909. Affirmed (exceptions over-ruled and record remanded for further proceedings), September 28, 1910. 163 Mich. 1.

People vs. John A. Adams. Error to recorder's court of Detroit. Seduction. Argued and submitted, June 23 and 24, affirmed, July 14, 1910. 162 Mich. 371.

People vs. George E. Sharrar. Error to Gratiot. Local option law. Argued and submitted, June 24, affirmed, September 27, 1910. Motion for re-hearing granted January 3. Re-argued March 3, and former opinion affirmed March 31, 1911. 164 Mich. 272.

People vs. Joseph Hennard. Error to Bay. Assault with intent to do great bodily harm less than the crime of murder. Submitted, April 21, and affirmed, July 14, 1910. 162 Mich. 225.

People vs. Walter Brott. Error to Osceola. Burglary. Submitted on briefs, April 21, and affirmed, November 11, 1910. 163 Mich. 150.

People vs. Joseph Fournier. Error to Saginaw. No. 23,828. This case involves the violation of a city ordinance and neither the Attorney General nor the prosecuting attorney participated in it.

People vs. Abe Lowerie. Error to Missaukee. Common drunkard. Submitted on briefs, October 21, and affirmed, December 17, 1910. 163 Mich. 514.

People vs. Benjamin Sharp. Error to Mecosta. Assault with intent to commit murder. Argued and submitted June 24, and affirmed, September 28, 1910. 163 Mich. 79.

People vs. Romeyn C. Parsons. Error to Eaton. Criminal slander. Submitted on briefs, October 21, and affirmed, November 11, 1910. Re-hearing denied, February 1, 1911. 163 Mich. 329.

People vs. Clyde Bowen. Error to Newaygo. Murder. Submitted on briefs, January 20, and reversed and new trial ordered, March 31, 1911. 165 Mich. 231.

People vs. Frank Bedell. Error to Kalkaska. Violation of local option law. Submitted on briefs, April 22, and exceptions over-ruled and case remanded for further proceedings, July 14, 1910. 162 Mich. 230.

People vs. John Curry. Exceptions from Ionia. Violation of local option law. Argued and submitted, June 24, and reversed, November 11, 1910. 163 Mich. 180.

Steve Lapham. Exceptions from Jackson. Violation of liquor law. Submitted, June 27, and affirmed, July 14, 1910. 162 Mich. 394.

People vs. Irving Kitchen. Exceptions from Clinton. Violation of liquor law. October 1, 1910, respondent appeared in the circuit court and was thereupon sentenced to twenty days in the county jail and to pay a fine of fifty dollars and costs taxed at fifty dollars and on October 20, the respondent paid the fine and costs and was released. (Stated in letter of prosecuting attorney, January 20, 1911.)

People vs. James Freemame, impleaded with James E. Burke, Charles Hadley and William Miley. Error to Hillsdale. Burglary. Submitted on briefs, October 20, and affirmed, November 11, 1910. 163 Mich. 336.

People vs. Andrew Duffek. Exceptions before sentence from Grand Traverse. Assault with intent to do great bodily harm less than the crime of murder. Submitted on briefs, June 27, and affirmed November 11, 1910. 163 Mich. 196.

People vs. Frank M. Dickerson. Exceptions from recorder's court of Detroit. Murder, first degree. Argued and submitted, June 27, and consideration of questions refused, July 14, 1910. 162 Mich. 400. (No. 24,062.)

Error to recorder's court of Detroit. Murder. Argued and submitted, October 21, and reversed and respondent ordered remanded, December 30, 1910. 164 Mich. 148. (No. 24,183.) (two cases.)

People vs. Michael Burkhart. Error to recorder's court of Detroit. Manslaughter. Argued and submitted, January 20, and affirmed, March 31, 1911. 130 N. W. 597.

People vs. Benjamin McDonald and John Mason. Error to Jackson. Breaking and entering in the night time an office, etc, Argued and submitted, October 21, and reversed, December 7, 1910. 163 Mich. 552.

People vs. Floyd Trine. Exceptions from Calhoun. Burglary. Argued and submitted, October 21; reversed and remanded for new trial, December 22, 1910. 164 Mich. 1.

People vs. Philip Yund. Exceptions from Berrien. Assault and battery. Submitted, October 21, and reversed, December 7, 1910. 163 Mich. 504.

People vs. Frank Slater. Exceptions from Clinton. Violation of local option law. Submitted on briefs, October 21, and verdict set aside and new trial ordered, December 30, 1910. 129 N. W. 22.

People vs. William Gilbert (alias Patrick Gilbert). Error to Ingham. Larceny. Submitted, October 21, and reversed and prisoner discharged, December 7, 1910. 163 Mich. 511.

People vs. Levi B. Aldorfer. Exceptions from Emmet. Violation of local option law. Argued and submitted, January 20, and affirmed, March 13, 1911. 130 N. W. 351.

People vs. William Mitchell. Exceptions from Wexford. Violation of local option law. Submitted, January 20. Reversed, new trial ordered, February 1, 1911. 129 N. W. 698.

People vs. Sylvester Hickman. Error to Jackson. Violation of local option law. Submitted on briefs, January 20, and conviction set aside and respondent discharged, March 13, 1911. 130 N. W. 331.

People vs. G. Kern Brewing Co., a corporation, Christian Kern, Otto Kern and Julius Kern. Exceptions from Sanilac. Violation of local option law. Argued and submitted, April 20, and reversed, June 2, 1911. 131 N. W. 557.

People vs. John Rasmussen. Error to Otsego. Violation of local option law. Motion to dismiss the writ of error was filed May 18. Submitted, June 13 and granted, June 21, 1911. (No. 24,343.)

People vs. Fred Fisch, Sr. Error to Presque Isle. Violation of local option law. Argued and submitted, January 20, and affirmed, March 13, 1911. 130 N. W. 341.

People vs. Charles Collins. Error to Chippewa. Manslaughter. Argued and submitted, April 20, and affirmed, May 8, 1911. 131 N. W. 78.

People vs. Robert W. Weeks. Error to Missaukee. Rape. Submitted in March and affirmed, March 13, 1911. 130 N. W. 697.

People vs. Adam Doll. Allegations of error (Crawford) received in February, 1911, but defendant "appeared at the April term of the circuit court for this county and was sentenced to pay a fine of fifty dollars and to serve twenty days in jail." (Convicted of violation of local option law.)

People vs. Elmer Klise. Exceptions from Emmet. Assault and battery. Submitted on briefs, April 20, and affirmed, May 8, 1911. 131 N. W. 74.

People vs. William H. Peterson. Error to Lapeer. Careless use of fire-arms. Argued and submitted, April 20, and reversed and new trial granted, May 8, 1911. 131 N. W. 153.

People vs. Emil Rohl. Exceptions from Macomb. Assault with intent to murder. Argued and submitted, April 20. Reversed and new trial ordered, June 2, 1911. 131 N. W. 587.

CRIMINAL CASES DISPOSED OF-Circuit Court.

People vs. Jacob Schwartz. Alcona circuit. Trespass. December 14 to 16, 1910, respondent acquitted. (See also People vs. Hayes, page 12, 1910 report.)

HABEAS CORPUS CASES DISPOSED OF-Supreme Court.

In re Louis Satt. Petition for habeas corpus for release from Branch State Prison, at Marquette. Argued and submitted, January 3, and petitioner remanded to custody, February 1, 1911. 164 Mich. 472.

CRIMINAL (EXTRADITION) CASES DISPOSED OF - Supreme Court of the United States.

Christopher Strassheim, Sheriff of Cook County, Illinois, appellant, vs. Milton Daily. Appeal from the district court of the United States for the northern district of Illinois. In re application for extradition of Milton Daily from the state of Illinois, on a charge of bribery. Argued and submitted, April 3, 4. Judgment reversed, and prisoner remanded, by opinion filed May 15, 1911. (Costs awarded to the State of Michigan, 221 U. S. 280.)

Statement of Facts.—The appellee, Milton Daily, was held by appellant under an executive warrant of the governor of Illinois, bearing date May 21, 1909, directing his delivery to the agent of the state of Michigan, application having been duly made by the governor of the said state of Michigan under date May 19, 1909, for the extradition of said Daily on a charge of bribery and also on a charge of obtaining money by false pretenses.

While so held by appellant a writ of habeas corpus was issued on petition of said appellee by the Honorable Kenesaw M. Landis, judge of the district court of the northern district of Illinois, and, upon hearing subsequently had thereon, said Milton Daily was discharged from said arrest by the judgment of the court from which order of discharge the appellant took this appeal.

For a full understanding of the questions involved so far as the same were disclosed at the hearing before the district court, a recital may be given of the facts out of which arose the indictments which were the basis of the requisition of the governor of Michigan, which was honored by the governor of Illinois.

In the year 1907 the legislature of the state of Michigan passed an act providing for the installation, equipment and operation of a twine and cordage plant in the state prison, at Jackson, and by the terms of said act the warden of

said state prison was authorized in connection with the board of control of the institution to purchase for and in behalf of the state the necessary machinery for such plant.

At the time of the passage of the act, Milton Dally, the appellee, was engaged in the business of selling sisal out of which such twine and cordage is made, and also the machinery necessary for its manufacture.

The machinery sold by him was that manufactured by the Hoover and Gamble Company of Miamisburg, Ohio, of which firm he was agent, residing at Chicago.

Bids were solicited by the board of control for the machinery necessary to install a 120 spindle twine system, and in response thereto sundry bids were submitted.

Prior to this time Dally had purchased on his own account machinery previously installed in a cordage plant at Ayton, in the province of Ontario, Canada, which machinery had been used to some extent at that point. It was of the manufacture of the Hoover and Gamble Company and had constituted a plant of sixty spindle capacity.

Among the bids submitted to the board of control and the warden under the authority of said act, was one from Dally offering this second hand machinery at a lower price than a bid made in the name of the company for new machinery.

The board after due consideration declined to purchase such second hand machinery, fearing that the purchase of it might be used to depreciate with the trade the quality of the twine manufactured by the state and thus lessen the chances of sale.

The warden was directed by the board to obtain from Dally another bid for all new machinery, which said bid Dally, as the agent for the Hoover and Gamble Company furnished, offering to equip the plant for the sum of \$29,105.00 with all new machinery. This bid was accepted by the board of control and a contract duly made in accordance therewith with the Hoover and Gamble Company.

Prior to the tender of said last mentioned bid, Dally had entered into a conspiracy with Allen N. Armstrong, the warden of the Michigan state prison, and with the Hoover and Gamble Company in whose name the said contract was taken, that in place of the new machinery called for by the bid and the contract, the second hand machinery, before spoken of should be removed from Ayton, Canada, to the shops of the Hoover and Gamble Company in Ohio, there repainted and furnished with certain new parts, and should then be reshipped to the Michigan state prison as the machinery provided for by the contract in question. The testimony of Mr. Armstrong, the ex-warden, established the fact that pending the furnishing of the bid by Dally last above set forth, Armstrong had been approached by Dally in the city of Chicago, to permit said second hand machinery to be installed in pretended compliance with the contract, and not to expose the deception, in return for which he was to receive from Dally a present of a thousand dollars or more.

The machinery was installed, including the second hand machinery which had been removed from Ayton, repainted and finished in the shops at Miamisburg and after shipment was completed, settlement and payment was made therefor, and later Armstrong, then warden of said prison, received through the hands of the son of Dally a present of \$1,500.00 in money.

On May 1, 1909, a grand jury, sitting in said county of Jackson, indicted Milton Dally for the crime of bribery of Armstrong, and also indicted Armstrong, Dally and one Andrew J. Eminger, who was then the secretary of said Hoover and Gamble Company, upon the charge of obtaining from said state of Michigan by the false pretenses before set forth, the purchase price of said machinery supposed to have been new, but in fact old, worn and used machinery, to-wit the sum of ten thousand dollars.

These two indictments furnished the basis for the action of the governor of Illinois, the propriety of which is in question in this cause.

The learned judge of the district court in discharging the appellee from arrest based his determination on different grounds as affecting the two indictments.

With respect to the charge of false pretenses it was the opinion of the court that the facts averred in the indictment upon consideration of the contract referred to therein did not constitute a crime.

With respect to the charge of bribery it was the opinion of the court that no essential ingredient of the crime was shown to have been committed by the respondent while within the state of Michigan, and that, therefore, as to such offense he could not be said to be a fugitive from justice.

It is admitted that Mr. Daily was in the state of Michigan on three occasions while the plans to substitute for the new machinery provided for by the contract the second hand machinery owned by said Daily, were being carried into operation and made effective. On July 22, 1907, the board of control and the warden met in Detroit for the purpose of considering the bids, and it was at that time that the bid was presented by Mr. Daily in person and accepted.

A few days prior to that Armstrong and Daily had met in Chicago, at which time Armstrong states that the arrangement was made that he should permit the second hand machinery to go through and receive a present, and in the meantime, Mr. Daily, as he himself testifies, had communicated to the Hoover and Gamble Company the understanding that the Ayton machinery was to be considered as included in the bid, although he denies the conversation to which Armstrong testifies.

Mr. Daily was again in Michigan on November 14, 1907. The purpose of this visit is not clearly established, but the testimony of Armstrong is to the effect that the purpose of Daily's visit at that time was to receive assurances that they would have no trouble from the consulting engineer, a question having been raised by Mr. Eminger with respect thereto, arising out of the word "new" in the contract.

Mr. Daily was again in Michigan after the machinery was in operation and when it was substantially accepted by the board of control.

We contended on behalf of the appellant that the presence of Daily in the state of Michigan upon each occasion was in furtherance of a corrupt purpose conceived and entered into by Daily, Armstrong and Eminger to impose upon the people of the state of Michigan, through the corruption and deception of its officers, property which it had not purchased, in pretended compliance with a contract for different property, the increased price of which it was the corrupt purpose of the conspiracy to obtain.

Appellant did not rely upon the doctrine of constructive presence of Daily in the demanding state, but upon his personal presence when the offenses charged were committed.

Counsel for appellee relied almost entirely upon and introduced a volume of evidence to prove appellee's contention that he, Daily, was not personally present in Michigan on the 13th day of May, A. D. 1908, the date named in the indictments, and therefore urges that Daily was not a fugitive from justice.

Appellant did not contend that Daily was personally present in Michigan on the 13th day of May, A. D. 1908, but under the authority of the Hyatt case (188 U. S. 691) expressly waived the materiality of that date and offered undisputed evidence that Daily was present in Michigan on other dates upon which constituent acts of the crimes charged were committed. Daily himself testified that he was personally present in Michigan upon the dates upon which appellant relies.

CRIMINAL CASES, PENDING,-Supreme Court.

People vs. Walter Knox. Motion for writ of error to Hillsdale.

People vs. George A. Fritch. Convicted in recorder's court of Detroit for manslaughter. On motion for writ of error, stay of execution of sentence, and to be admitted to bail, pending the appeal. Submitted, March 19, and motion denied, April 1, 1910. 161 Mich. 111. Petition for stay of execution and admission to bail, filed, by defendant, June 24, 1911.

People vs. Harold E. Whiting. Error to recorder's court of Detroit.

People vs. Frank Radley. Error to Wayne circuit.

People vs. Carl Eberle and Stephen H. Carroll. Exceptions from Jackson circuit.

People vs. Robert E. Herzog. Error to recorder's court of Detroit.

People vs. Arthur Chambers. Error to recorder's court of Detroit.

People vs. Bartolomeo Sartori. Error to Kent circuit.

People vs. Bennie Lapidus. Exceptions from Ottawa circuit.

People vs. August Oblaser. Error to Wayne circuit.

People vs. Theodore Swenson. Exceptions from Houghton circuit. Violation of liquor law. Argued and submitted, June 27, and affirmed, July 14, 1910. (No. 24,054.) 162 Mich. 397.

People vs. Theodore Swenson. Error to Houghton circuit. Violation of liquor law. Submitted in April, 1911. No. 24,414.)

People vs. Julius Martin. Exceptions from Calhoun circuit.

People vs. Walter Lewis. Exceptions from Allegan circuit.

People vs. Frank Hancock. Exceptions from Allegan circuit.

People vs. James Parker. Error to Jackson circuit.

People vs. Joseph Cismadija. Error to Kalamazoo circuit.

People vs. Fred G. Adler and Gar A. Adler. Exceptions from Jackson circuit.

People vs. David J. Stewart. Error to Berrien circuit.

People vs. Frank Schafran. Error to recorder's court of Detroit.

HABEAS CORPUS CASES PENDING-Supreme Court.

In re Charles E. Blashfield. Supreme court. No. 21,860. Application for certiorari to review "matter of the discharge of Charles E. Blashfield in habeas corpus proceedings," filed August 13, 1906, and writ issued on the same day.

SCHEDULE "B."**Statement of mandamus cases.**

MANDAMUS CASES DISPOSED OF-Supreme Court.

William L. Thompson vs. State Veterinary Board. (No. 22,929,) Application for mandamus to compel this board to issue a certificate of registration to relator. Return was filed September 23, 1908, stating "that since the filing of the petition for mandamus and the issuance of the order to show cause, this board has reconsidered its action in refusing to register and issue a certificate of registration, in accordance with section 4, act 244, of the Public Acts of 1907, and has registered the said William L. Thompson and issued a certificate of registration as required by the provisions of said act."

Edward G. Folsom, Jr., vs. State Veterinary Board. Application for mandamus to compel this board to register relator under Act 244, Public Acts of 1907. Submitted, July 6, and writ denied, July 21, 1909. 158 Mich. 277.

Michigan Railroad Commission vs.

Michigan Central Railroad Company,

Lake Shore & Michigan Southern Railway Company,

Pere Marquette Railroad Company,

Grand Rapids & Indiana Railway Company.

Grand Trunk Western Railway Company,

Detroit, Grand Haven & Milwaukee Railway Company, and the

Grand Trunk Railway Company of Canada,

Application for mandamus to compel these railroad companies to put in force an order fixing certain "excess baggage rates." Argued and submitted November 16, 1909. Writ granted, February 3, and order entered, May 26, 1910. 159 Mich. 580.

Lufkin Rule Company vs. Frederick C. Martindale, Secretary of State. Application for mandamus to compel the Secretary of State to record an amendment to relator's articles of association. Submitted on briefs, May 3, and writ denied, September 28, 1910. 163 Mich. 30.

Elijah Haney vs. Oramel B. Fuller, Auditor General, Application for mandamus to compel issuance of certificate of error, and to cancel sale of certain land. Petition dismissed, May 8, 1911. 164 Mich. 681.

Village of Wolverine et al., vs. Frank Shepard, Circuit Judge, Cheboygan County. Application for mandamus to compel the circuit judge to dissolve an injunction. Submitted, July 1, and writ denied, September 27, 1910. 162 Mich. 713.

John E. Bird, Attorney General, ex rel. Benjamin F. Graves, vs. The Mayor and Common Council of the City of Adrian. Certiorari to Lenawee circuit. Application for mandamus. There was a judgment denying the writ and relator brings certiorari. Argued and submitted, October 10, and reversed, December 30, 1910. 164 Mich. 143.

Francis G. Ely, Receiver of the Citizens' Mutual Fire Insurance Co., of Holly, Michigan, vs. George W. Smith, Circuit Judge of Oakland County. Application for mandamus to compel entry of order for an assessment upon the members of this company for the payment of losses and expenses. On rehearing the Attorney General filed brief as *Amicus Curiae* in June. Resubmitted on briefs, July 1, and former opinion modified, September 28, 1910. 162 Mich. 476.

Franz C. Kuhn, Attorney General, ex rel. Joseph L. Hudson et al., vs. Common Council of Detroit. Certiorari to Wayne circuit. Petition for mandamus in re municipal ownership of street railway system. Reversed and writ granted, February 1, 1911. 164 Mich. 369.

Anton C. Bauer vs. State Board of Agriculture. Application for mandamus in re contract with the United States government to furnish quarters for postoffice at East Lansing. Submitted on briefs, November 29, 1910, and writ denied February 1, 1911. 164 Mich. 415.

Henry A. Mandell and Charles A. Buhrer vs. Thomas F. Farrell, County Clerk, Wayne County. Application for mandamus to compel respondent to file relators' petitions for primary nominations as circuit judge and county auditor respectively. Writs granted, March 13, 1911. 164 Mich. 585.

James O'Hara vs. Frederick C. Martindale, Secretary of State. (No. 24,492.) Application for mandamus to compel the "Secretary of State to file the two petitions received by him from relator on February 4, 1911, and to take the proceedings thereafter, required by statute so that relators' name may appear upon the printed ballots of both the Republican and Democratic parties as a candidate for circuit judge of the 2d Judicial Circuit of Michigan, to be voted at the primary election to be held March 1, 1911." Answer and brief of the Attorney General were filed February 14, but the court "would not take jurisdiction of the case."

Frank Sheperd vs. Frederick C. Martindale, Secretary of State. Application for mandamus to compel the "Secretary of State forthwith to receive the nominating petitions of said relator and any others that may be produced touching the same subject and if found sufficient in number and in qualifications of the signers thereof to duly certify the fact thereof." Stipulation of discontinuance filed February 15, 1911.

Clarence B. Smith vs. Oramel B. Fuller, Auditor General. Application for mandamus to compel the Auditor General to issue a warrant, etc., on the State Treasurer for per diem of relator, to include per

diem for Sundays. Argued and submitted, March 6. Writ granted, March 27, 1911. 165 Mich. 140.

Franz C. Kuhn, Attorney General, ex rel. Chester H. Bliss, vs. Board of Supervisors of the County of Genesee. Application for mandamus to compel the board to reconvene and canvass the vote cast at a local option election. Writ granted, May 8, 1911. 131 N. W. 163.

MANDAMUS CASES DISPOSED OF-Circuit Courts.

John E. Bird, Attorney General, ex rel. Benjamin F. Graves, vs. The Mayor and Common Council of the City of Adrian. Application for mandamus. Order denying writ entered July 1, 1910, and case taken to supreme court by certiorari.

Franz C. Kuhn, Attorney General, ex rel. Joseph L. Hudson et al., vs. Common Council of Detroit. Wayne circuit. No. 51,952. Petition for mandamus to compel the common council to refrain from submitting amendment to the charter in re municipal ownership of street railway system. Order denying petition, July 25, 1910. (Taken to supreme court by certiorari.)

MANDAMUS CASES PENDING-Supreme Court.

The Regents of the University of Michigan vs. James B. Bradley, Auditor General.

Board of Supervisors of the County of Roscommon vs. Oramel B. Fuller, Auditor General.

The Public Schools of the City of Muskegon vs. Luther L. Wright, Superintendent of Public Instruction.

John E. Bird, Attorney General, ex rel. John Greenfield et al., vs. Board of Supervisors of Alcona County.

Oramel B. Fuller, Auditor General, vs. Edward L. Cousino, Treasurer of Monroe County.

Michigan Railroad Commission vs. Michigan Central R. R. Co. ("Oxford Case").

Albert N. Ford, trustee, vs. State Board of Education.

Patron's Mutual Fire Insurance Company of Michigan, Limited, vs. Franz C. Kuhn, Attorney General.

Adolph N. Marion vs. Michigan Railroad Commission (In re farm crossing).

The Grand Fraternity vs. C. A. Palmer, Commissioner of Insurance.

SCHEDULE "C."**Statement of quo warranto cases.**

QUO WARRANTO CASES DISPOSED OF-Supreme Court of Michigan.

John E. Bird, Attorney General, ex rel. John W. Linnell, vs. Joseph E. Gay et al. Quo Warranto proceedings to determine by what right Respondent Gay and others exercise the privileges and franchises of a corporation, under the name of "Evergreen Bluff Mining Company." Submitted June 14, and demurrer sustained, September 27, 1910. 162 Mich. 612.

The People of the State of Michigan, by John E. Bird, Attorney General, vs. Grand Rapids-Muskegon Power Co., Quo warranto proceedings to determine the right of respondent to maintain a certain dam in the Muskegon river. Argued and submitted, June 22, and judgment for respondent granted December 30, 1910. 164 Mich., 121.

The People of the State of Michigan, ex rel. John E. Bird, Attorney General, vs. Alfreda Maude Galbraith. Quo warranto proceedings to determine the right of respondent to the office of member of the board of registration of nurses. Submitted, June 20, and judgment of ouster entered, September 28, 1910. 163 Mich. 47.

The People of the State of Michigan, ex rel. Charles E. Ruggles, vs. The Buckley & Douglas Lumber Company. Error to Manistee circuit. Quo warranto proceedings to determine the right of this corporation to exercise certain privileges. Submitted at January term, and judgment for respondent affirmed, March 13, 1911. 164 Mich. 625.

The People of the State of Michigan, ex rel. Guy W. Selby, mayor, and Joshua C. Cole et al., members of the common council of the city of Flint, vs. Bruce J. MacDonald (No. 24,446). Quo warranto proceedings to test the right of respondent to hold the office of member of the charter commission of Flint. Submitted, February 21, and information dismissed, February 24, 1911. 164 Mich. 590.

QUO WARRANTO CASES DISPOSED OF-Circuit Courts.

The People of the State of Michigan, ex rel. Charles F. Ruggles, vs. The Buckley & Douglas Lumber Company, Manistee circuit. Judgment was entered in favor of respondent and the case was taken to the supreme court, on error.

QUO WARRANTO CASES PENDING-Supreme Court of the United States.

The People of the State of Michigan, by Attorney General, on the relation of George E. Ellis, Moses Taggart, and Samuel A. Freshney, vs. John F. Calder et al. Appealed from supreme court of Michigan (see statement in 1909 report, p. 17).

QUO WARRANTO CASES PENDING-Supreme Court of Michigan.

John E. Bird, Attorney General, in behalf of the People of the State of Michigan, ex rel. Henry F. James, vs. The National Cash Register Company.

People of the State of Michigan, by John E. Bird, Attorney General, vs. National Biscuit Company, a foreign corporation.

The People of the State of Michigan, ex rel. Joseph B. Ware, vs. The Lenawee County Telephone Company.

SCHEDULE "D."

Statement of chancery cases in state courts and cases in equity in United States courts.

CASES IN EQUITY DISPOSED OF—Circuit Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

Wirt E. Humphrey and Jake Filowitz vs. The American Reserve Bond Company et al. In re petition of the Western Trust and Savings Bank. Receiver, vs. Frank P. Glazier, State Treasurer, and George A. Prescott, Secretary of State. September 17, 1906, heard and order entered directing State Treasurer and Secretary of State to deliver to the register of the court all moneys, securities, etc., deposited with them by the companies. In March, 1911, received statement from attorneys of the Western Trust & Savings Bank, that the order of March 21, 1910, entered by Judge Swan, was "final order."

The Northeastern Telephone & Telegraph Company, and
Postal Telegraph-Cable Company vs.

Oramel B. Fuller, Auditor General (two cases). Bills to restrain collection of taxes under Act 49, P. A. 1909. The taxes involved were paid in fiscal year, 1911, after the decision in the western district, (185 Fed. 634.) and stipulations dismissing cases were mailed to the clerk of the court, June 3, 1911, for filing. (See statement of all telephone, etc., cases,—among cases disposed of in western district—for amounts of taxes, etc.)

CASES IN EQUITY DISPOSED OF—Circuit Court of the United States, Western District of Michigan, Southern Division, in Equity.

Michigan Telephone & Telegraph Tax Cases.

The following companies on May 10, 1910, filed bills of complaint in the circuit court of the United States for the western district, to restrain Oramel B. Fuller, Auditor General, from the collection of taxes assessed under act 49, of the Public Acts of 1909:—

Citizens Telephone Company (Grand Rapids) No. 1696,
Citizens Telephone Company, of Battle Creek, No. 1699,
Citizens Telephone Company, of Jackson, No. 1700,
Citizens Telephone Company, of Marshall, No. 1701,
Michigan State Telephone Company, No. 1697,
Twin City Telephone Company, No. 1698.
Union Telephone Company, No. 1702.

Two similar cases were instituted in the circuit court of the United States for the eastern district of Michigan, southern division, in equity, for the same purpose, by the—

Northeastern Telephone & Telegraph Company, and the
Postal Telegraph-Cable Company.

In addition to the cases enumerated above, two cases in the Ingham county circuit court, in chancery, presenting practically the same issues, were instituted by the Attorney General, in the name of the people, against the—

American Telephone & Telegraph Company, and the
Western Union Telegraph Company.

In the cases in the western district, demurrers were filed, by the Attorney General, to all of the bills, and all of the demurrers were argued and submitted on June 11, 1910.

On the day of the hearing, Judge Denison, ordered that the former restraining orders be so modified as to compel each complainant company to pay, forthwith, the entire amount of tax which was due under the old law, as a condition precedent to the continuance of the restraining orders. (The amount paid under this order of June 11, 1910, is shown in the latter part of this statement.) The demurrers were sustained, August 11, 1910, as to the following companies:—

Citizens Telephone Company, of Battle Creek,

Citizens Telephone Company, of Marshall,

Twin City Telephone Company,

and over-ruled as to the following companies:—

Citizens Telephone Company (Grand Rapids),

Citizens Telephone Company, of Jackson,

Michigan State Telephone Company,

Union Telephone Company.

The defendant auditor general, then answered the bills in the four remaining cases in the western district. The two cases in the eastern district and the two in the Ingham circuit, remained in statu quo, pending the decisions in the western district.

A large amount of testimony was taken and the cases, in the western district, were argued and submitted, upon the merits. December 29, 1910, and the Federal Circuit Judge, on February 7 1911, dismissed the bills, with costs against the complainants. (185 Fed. 634.) (See "Costs of Suits" schedule for amount paid.)

All of the companies, except the Citizens Telephone Company (Grand Rapids), and the Citizens Telephone Company, of Jackson, have since paid their taxes, in full, with the accrued penalties, thus disposing of all but those cases.

(See statement following opinion of Judge Denison for amounts paid.)

The Grand Rapids and the Jackson telephone companies appealed to the supreme court of the United States. An attempt will be made, by the Attorney General, to advance the hearing of these cases so they may be disposed of at an early date.

OPINION OF JUDGE DENISON ON THE DEMURRERS.

THE TELEPHONE TAX CASES.

The demurrers in these cases were orally argued on June 11th, but counsel required further time for the submission of briefs, and such submission was not

finished until after the commencement of the Marquette term, which has been in continuous session until within the last few days.

I have gone far enough into the examination of the main question involved to be satisfied that it ought not to be decided on demurrer. It is apparent that the legislation attacked did not make a discrimination against the complainants and in favor of other telephone companies. The substantial question on which these cases will turn must be whether such discrimination was, as complainants claim, "unreasonable and arbitrary," or whether it was, as the Attorney General claims, merely the exercise of a reasonable scheme of classification. Properly to determine this question, the court should be informed whether the property of the companies favored was trifling and inconsiderable as compared with the property of the companies taxed, or whether, on the other hand, the property exempted was of very large amount; and should also be informed what all the facts were which either justified or forbade the so-called classification. Not all the facts on this subject appear by the pleadings, in their present state, and any attempt to decide the meritorious question, while the record is in that condition, would be unfortunate. If, for example, it is true, as said on the argument, that the distinction made is really, when applied to the known facts, a distinction between co-operative companies and those organized for profit, that fact might or might not ultimately be thought important, but the case ought not to stand on a record not showing such fact.

It is said that the burden is on the complainants to show, by their bills of complaint, the absence of all things which could justify the discrimination, and that complainants' allegation that the discrimination was wholly arbitrary is only the statement of a conclusion, and that the bills are, therefore, fatally defective. If this was so, it would mean only that complainants should be permitted to amend; but it seems to me that, under the circumstances here existing, when the complainants allege that there *was discrimination in fact* in favor of "corporations, companies and persons carrying on the telephone business *under the same conditions*" as those under which complainants transact their business, and that such discrimination is arbitrary and "*merely and solely because of the amount of the business done*" and that the "exemption is based upon no reasonable ground and affords *no reasonable basis of classification*," they have stated sufficient facts, as distinguished from conclusions, to entitle them to make proof, if they can, that these facts are true.

The remedy at law, by payment and suit to recover, is not so adequate and complete as to bar relief in equity. The right to an injunction against the collection of a state tax, if imposed under an unconstitutional law, was recognized in the *Michigan Railroad Tax Cases* (138 Fed. Rep., 229; 201 U. S. 245). The alleged grounds of unconstitutionality, in the present case, are not so obvious, but are rather so far dependent upon a consideration of the facts and circumstances, that the decisions denying an injunction against a plainly unconstitutional tax do not apply.

The amount involved in each case is, at most, the amount of the tax imposed and about to be enforced. The right to tax, under another law, is conceded; the only complaint is that the state is proceeding under an invalid law, to collect a tax which exceeds the amount of the real and valid tax. There can be no presumption that if the law is unconstitutional, the state will proceed to enforce it in future years. I think the case calls for the application of the rule that jurisdiction is determined by the amount of the tax, and not by the value of the property taxed. There are no special circumstances of injury or irreparable damage, as sometimes found. If this court must hear a controversy over a tax of nineteen hundred dollars, it must hear one over nineteen dollars:

Walker v. Northeastern, 147 U. S. 370.

Fishback v. W. U. Tel. Co., 161 U. S. 96.

Ogden v. Armstrong, 168 U. S. 232.

Holt v. Indiana Co., 176 U. S. 72.

It follows that the demurrer must be sustained in the three cases where the tax is less than two thousand dollars (Nos. 1,698, 1,699 and 1,701) and overruled in the other four cases.

The injunctive order has been modified so that it requires complainants to pay the full tax assessable under the old law. With this modification, it should stand, in the four cases, until the hearing; but the matter is of much public importance, the proofs will be simple and short, and a final hearing can be had very

speedily, if the state wishes. As a condition of maintaining the injunctive order, it will be directed that complainants file their replications immediately upon the filing of the answers, and that, thereupon, complainants take their *prima facie* proofs within fifteen days; that the state take its proofs within fifteen days thereafter; that the complainants take their proofs in reply within ten days thereafter; and that the case then stand for final hearing without notice; and it will be understood that such hearing will have precedence over the ordinary business of the court and of counsel.

Dated August 11, 1910.

ARTHUR C. DENISON,
District Judge.

The amounts collected through these cases are, as follows:

TELEPHONE AND TELEGRAPH TAXES FOR 1909, AND PENALTIES PAID.

Telephone company.	Amount of tax paid after order of June 11, 1910.	Amount of tax paid after final decision Feb. 7, 1911 (185, Fed. 634).	Interest on all of the tax each company paid	Total of entire tax and interest as penalties paid.
*Citizens Telephone Co., Grand Rapids	\$19,665 58			\$19,665 58
*Citizens Telephone Co., of Jackson	1,300 25			1,300 25
Citizens Telephone Co., of Battle Creek	613 50	\$874 98	\$108 52	1,597 00
Citizens Telephone Co., of Marshall	179 91	171 54	22 47	373 92
Michigan State Telephone Co.	110,297 67	127,445 40	16,224 95	253,968 02
Twin City Telephone Co.	816 21	527 56	74 36	1,418 13
Union Telephone Co.	5,068 69	6,198 26	783 18	12,050 13
Northeastern Telephone & Telegraph Co.	190 00	1,473 86	165 72	1,819 58
Postal Telegraph-Cable Co.		6,201 99	682 22	6,884 21
American Telephone & Telegraph Co.		1,550 50	170 56	1,721 06
Western Union Telegraph Co.		10,336 66	1,137 03	11,473 69
Totals.....	\$138,121 81	\$154,780 75	\$19,369 01	\$312,271 57

*Note—The amounts of taxes still unpaid are shown in the statement of the Grand Rapids and Jackson telephone cases, pending in the Supreme Court of the United States, in the latter part of this schedule.

CHANCERY CASES DISPOSED OF—Supreme Court of Michigan.

Wm. W. Wedemeyer, Receiver, Chelsea Savings Bank, vs. Victor D. Hindelang, Wm. J. Knapp and Frank E. Ives. Appeal from Washtenaw, in chancery. Bill to enforce the statutory liability of the stockholders. From a decree (entered January 7, 1910) for complainant, defendants appeal. Submitted, April 15, and modified and affirmed, June 15, 1910. 161 Mich. 600.

Mary McDonald vs. Archie T. Miller, and James B. Bradley, Auditor General. Appeal from Bay circuit. Bill to set aside a sale of land delinquent for taxes. From a decree dismissing the bill but reserving the right to obtain a reconveyance under sections 3960-3962, Compiled Laws of 1897, defendants appeal. Argued and submitted, April 22, and affirmed, July 14, 1910. 162 Mich. 81. (Amount of costs recovered is shown in Schedule "I.")

Michigan Savings Bank of Detroit, Michigan, vs. Dime Savings Bank, of Detroit, Michigan, Frederick C. Martindale, Secretary of State, Henry M. Zimmermann, Commissioner of Banking, and Thomas F. Farrell, County Clerk of Wayne County. Appeal from Wayne circuit, in chancery. Bill for injunction, to restrain a proposed change in the name of defendant bank, to "The Bank of Michigan," from a decree for complainant, defendant bank appealed. Submitted, June 14, reversed and bill dismissed, July 14, 1910. 162 Mich. 297.

Michigan Central Railroad Company et al., vs. Michigan Railway Commission. Appeal from Wayne circuit, in chancery (supreme court No. 23,702). Bill for injunction to restrain the railway commission from enforcing an order as to excess baggage rates. From a decree dismissing the bill, complainants appeal. Submitted, January 18, and affirmed, March 19, 1910. 160 Mich. 355.

American Surety Company of New York, intervening petitioner in Com'r. of Banking vs. Chelsea Savings Bank et al. Appealed from Washtenaw, in chancery. Argued and submitted, February 28, and affirmed, March 19, 1910. Motion for rehearing granted and case reargued, June 30. Former opinion affirmed July 14, 1910. 161 Mich. 704 (691).

Hattie Withey et al., vs. Isaac Bloem, Deputy Factory Inspector, and Richard H. Fletcher, Commissioner of Labor. Appeal from Barry circuit, in chancery. Bill to enjoin the enforcement of act 285, P. A. 1909. From a decree for complainants, defendants appeal. Submitted on briefs, June 27, and reversed and bill dismissed, December 7, 1910. 163 Mich. 419.

Effie Klotz vs. Willis Chatfield, as County Drain Commissioner, Ernest Knierin and Peter Farnsell, James B. Bradley, as Auditor General, and William Britton, as County Treasurer. Appeal from Lenawee circuit, in chancery. Bill for the cancellation of a drain tax. From decree for complainant, defendants appeal. Submitted, June 29, and remanded for further proceedings, September 28, 1910. 163 Mich. 86.

The Ann Arbor Railroad Company, and other railroad companies, complainants and appellants, vs. Michigan Railroad Commission. Appeal from Wayne circuit, in chancery. Bill to enjoin the enforcement of certain demurrage rules. From an order sustaining a demurrer to the bill, complainants appeal. Submitted, June 20, and reversed, September 28, 1910. 163 Mich. 49.

CHANCERY CASES DISPOSED OF-Circuit Courts.

George W. Moore, Commissioner of the Banking Department, vs. State Bank of White Pigeon et al. St. Joseph circuit, in chancery. Proceedings for appointment of receiver. J. Murray Benjamin, of White Pigeon, appointed receiver, August 2, 1904. Order for a final dividend, filed and entered, July 11, and the receivership finally closed, August 1, 1910.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the years 1894, 1895, 1896, 1897, 1899 and 1903. Wm. T. Sleator, petitioner, vs. James B. Bradley, Auditor General. Alpena circuit, in chancery. Submitted, January 31, 1908, and decree on petition of Wm. T. Sleator filed, November 3, 1909. (Shown by copy of calendar entries, received in March, 1911.)

Henry M. Zimmerman, Commissioner of Banking, vs. Athens State & Savings Bank et al. Calhoun circuit, in chancery. Bill for appointment of receiver, etc. Frank Wolf of Battle Creek, appointed receiver. September 3, 1908, restored to the stock-holders, February 4, and authorized to resume business, February 8, 1909. (See reports of Com'r. of Banking, 1908, pp. xv and xxii, and 1909, pp. xiv and 21.) The matter of the settlement with the receiver was disposed of by the filing of a decree, September 9, 1910 (in accordance with stipulation filed February 4, 1910), allowing the receiver \$1,925.00 for his compensation and in payment for the services of his attorneys, and discharging receiver and cancelling bond, and ordering that no costs shall be assessed to any party to this cause.

Wm. W. Wedemeyer, receiver, Chelsea Savings Bank, complainant, vs. Victor D. Hindelang, et al. Washtenaw circuit, in chancery. Bill to enforce liability of stockholders. After the decision of the supreme court, (161 Mich. 600), the receiver filed a petition in the circuit court, for executions, and December 16, 1910, an order was made that executions issue and they were issued.

The Grand Rapids & Indiana Railway Company vs. Michigan Railroad Commission. Kent circuit, in chancery. In re petition of Noack & Gorenflo, relative to excess baggage rates. This case is governed by M. C. R. R. Co. vs. Mich. R. R. Com'n., 160 Mich. 355,—decided March 19, 1910.

Michigan Central Railroad Co., Lake Shore & Mich. So. Ry. Co., Pere Marquette Railroad Co., Grand Trunk Western R. R. Co., Detroit, G. H. & M. Ry. Co., & Grand Trunk Railway Co. of Canada vs. Michigan Railroad Commission. Wayne circuit, in Chancery, No. 35,392. This case is governed by M. C. R. Co. vs. Mich. R. R. Com'n., 160 Mich. 355,—decided, March 19, 1910.

Detroit & Mackinac Railway Company vs. Michigan Railroad Commission. Wayne circuit, in chancery. Bill for injunction to restrain enforcement of a certain rate, ordered by the commission to be put into effect. There are several intervening parties to the cause. Heard and submitted, January 9, and decree entered, dismissing bill and amending bill, February 11, 1911. (Appealed to supreme court, by complainants.)

Title Guarantee & Surety Company, complainant, vs. The State of Michigan, The Fidelity & Deposit Company of Maryland, The Federal Union Surety Company of Indianapolis, The Bankers Surety Company of Cleveland, the Aetna Indemnity Company of New York, The Empire

State Surety Company of New York, William W. Wedemeyer, receiver Chelsea Savings Bank. Ingham circuit, in chancery. Argued and submitted, January 5. Demurrers over-ruled and order entered, April 28, 1911 (Costs of \$20.00 taxed against each defendant, which filed demurrer, and twenty days allowed to plead or answer. (Appealed to supreme court.)

In re petition of Oramel B. Fuller, Auditor General, for the sale of certain lands for the taxes of 1907. George Urban, petitioner. Lenawee circuit, in chancery. Argued, May 9, 1910, and stipulation to discontinue, filed, September 12, 1910.

The People of the State of Michigan vs. American Telephone & Telegraph Company.

The People of the State of Michigan vs. Western Union Telegraph Company. Ingham circuit, in chancery.

Bills to foreclose liens for taxes of 1909, under act 49, Public Acts of 1909. These cases involved the same questions as were involved in the "Telephone Tax Cases" in the circuit court of the United States for the western district of Michigan, and after the final decision in those cases (185 Fed. 634) the taxes were paid. (See table at end of statement of "Telephone Tax Cases" for amounts). Orders dismissing these cases were mailed to the clerk, June 1, 1911; for filing.

The Attempt to Increase the Taxing Basis of the Detroit, Grand Haven & Milwaukee Railroad Company and Proceedings Incident Thereon.

The People of the State of Michigan, represented by Oramel B. Fuller, Auditor General, and Franz C. Kuhn, Attorney General, vs.

Detroit, Grand Haven & Milwaukee Railway Co. Kent circuit, in equity.

This company exists under a special charter granted March 7, 1834, to the Detroit and Pontiac Railroad Company, in which was incorporated by Act 140 of 1855 a provision permitting it to pay taxes at the rate of one per cent per annum upon its capital stock paid in, in lieu of all other taxes.

This exemption was enjoyed by the company until the year 1897. From 1897 to 1901 it voluntarily paid taxes under the general law at a specific rate upon its gross earnings. Upon the enactment in 1901 of the law for ad valorem taxation of railroads, the state board of assessors included this company in the list of companies taxed pursuant to that system. The company instituted proceedings in the Federal court to restrain the collection of the tax on the ground that it was protected by charter contract. The company was successful in its contention. The Federal Supreme Court decided upon the authority of Attorney General vs. Joy (55 Mich. 94), that the charter provision in question, prohibited its taxation by the state beyond the rate of one per cent upon its capital stock paid in. Upon the decision in this case the

company dropped back to its charter basis of taxation, i. e., one per cent, upon its capital stock paid in.

The State thereupon instituted two proceedings against the company to test its right to the tax exemption. The first was by a bill in chancery in the circuit court for the county of Ingham, and the second by proceedings in quo warranto filed in the State supreme court. In both of these cases the company was successful in maintaining its special charter and its right to the tax exemption (157 Mich. 144). The State court also based its conclusion upon the claimed adjudication of the Joy case without other investigation into the history of the company. (Atty Genl. 1910 report, pages 18 and 20.)

Under the charter the company pays the annual amount of \$25,171.40 as taxes. Information obtained in the trial of the cases above referred to indicated that it was not reporting or paying taxes upon its full amount of capital stock paid in. In 1910 and again in 1911 upon suggestion of the Attorney General the Auditor General computed the amount of capital stock paid in to the company as \$7,000,000.00 and estimated the tax at \$70,000.00 per year. Proceedings by information in equity were instituted in the circuit court for Kent county to determine the amount of capital stock actually paid in, and to increase the taxing basis of the company accordingly. If the State can successfully maintain the claims made, the taxing basis of the company will be almost trebled. The information was filed September 20, 1910; the demurrer was argued and submitted on May 12, 1911, and Circuit Judge McDonald on May 16, 1911, over-ruled the demurrer and entered an order requiring the defendant to answer before June 15, 1911. On June 9, 1911, the case was appealed to the Supreme Court.

Dwight Whittemore and Emma Whittemore vs. Albert A. Griffin et al., and Oramel B. Fuller, Auditor General. Gratiot circuit, in chancery. Opinion filed December 30, 1910, and decree countersigned, filed and entered, January 31, 1911.

In re petition of the Auditor General of the State of Michigan for the foreclosure of the tax lien of the State of Michigan against lands alleged to be delinquent for the non-payment of taxes for the year, 1905. Dwight Whittemore et al., petitioners, vs. Oramel B. Fuller, Auditor General et al. Gratiot circuit, in chancery. Opinion filed, June 30, 1911.

Anton C. Bauer vs. State Board of Agriculture. Ingham circuit, in chancery. Bill for injunction to restrain the board from renting one of its buildings to the United States for a postoffice. Order to show cause was issued and the matter was submitted July 25, and Order denying injunction and dismissing order to show cause, was signed, etc., July 27, 1910. (See also mandamus case, 164 Mich. 415.)

The Kellogg Switchboard and Supply Company, a corporation, et al., vs. Oakland County Telephone Company, a corporation, and Arthur F.

Newberry, trustee. Oakland circuit, in chancery. The Attorney General filed answer to order to show cause and disclaimer, in December, 1910.

In re petition, of Frederick Gustafson, to bar wives' dower. Baraga circuit, in chancery. Discontinuance, dated, May 4, 1911.

In re petition of Charles Carlson, to bar wife's dower. Baraga circuit, in chancery. Discontinuance, dated, May 4, 1911.

In re petition of the Sanilac Stock Farm for restoration of lost certificate No. 4456 on sale of State swamp land. Answer and return of the Commissioner of the State Land Office, executed, December 29, 1910.

Edmund S. Black vs. Davidson-Wonsey Company, its officers, Temple Emery, State Salt Inspector and Thomas J. Wreath, Deputy Salt Inspector, and their successors in office. St. Clair circuit, in chancery. Bill for injunction. Discontinuance, dated June 14, 1911. (See Mich. Salt Works vs. John Baird et al.)

Franz C. Kuhn, Attorney General, ex rel. John B. Chaddock, George Sayles, Elmer B. McGraw, Elmer Houser, and Caleb S. Pitkin, vs. Board of Supervisors of the county of Wayne. Wayne circuit, in chancery. Information, with prayer for injunction. Heard before full bench, February 18, 1911. Opinion, copy received, March 22, 1911.

Adolph N. Marion vs. Michigan Railroad Commission. Wayne circuit, in chancery. Argued and submitted on demurrer, May 1, and demurrer sustained, May 1, 1911. (Order sustaining demurrer, filed May 3, 1911.)

Franz C. Kuhn, Attorney General, ex rel. Milton A. McRae, vs. Wm. B. Thompson, et al. Wayne circuit, in chancery, No. 38,810. Decree dismissing information and sustaining demurrer, May 25, 1911. (Appealed to supreme court.)

CHANCERY CASES DISPOSED OF-Attorney General's Office.

In re application of Anton C. Bauer, for the use of the name of the Attorney General, to file an information in the Ingham circuit court, in chancery, against the State Board of Agriculture. Application not granted. See case of Anton C. Bauer vs. State Board of Agriculture, bill for injunction and application for mandamus (in this report, and mandamus case in 164 Mich. 415).

CASES IN EQUITY, PENDING-Supreme Court of the United States.

TELEPHONE TAX CASES.

Citizens Telephone Company (Grand Rapids) and Citizens Telephone Company, of Jackson, appellants, vs. Oramel B. Fuller, Auditor General of the State of Michigan, (two cases). Appeals from the circuit court of the U. S. for the western district of Michigan, southern division, in equity. In the preceding part of this Schedule there is a general statement covering all of the telephone and telegraph cases and amounts of taxes paid (see cases in equity, disposed of, circuit court of the U. S. western district).

The following statement shows the amounts of taxes unpaid, June 30, 1911:

Telephone companies.	1909 tax balance, unpaid June 30, 1911.	1910 tax, entire tax, unpaid June 30, 1911.	Total of all taxes due June 30, 1911.
Citizens' Telephone Co., Grand Rapids	\$27,883 03	\$49,275 54	\$77,158 57
Citizens Telephone Co. of Jackson	2,007 48	3,336 36	5,343 84
Totals	\$29,890 51	\$52,611 90	\$82,502 41

And the penalties at the rate of one per cent per month, will be an additional amount.

An attempt will be made by the Attorney General to advance the hearing of these cases so they may be disposed of at an early date.

CASES IN EQUITY, PENDING-Circuit Court of the United States, Eastern District of Michigan, Southern Division, In Equity.

Edward W. Bishop vs. Michigan Savings and Loan Association and George Lord, Chief of the Building and Loan Division of the State Department.

EXPRESS COMPANY TAX CASES.

James C. Fargo, as President of the American Express Company, vs. Perry F. Powers, Auditor General, et al. Number 3844.

By stipulation this case was revived against the succeeding Auditor General Bradley.

This is a bill filed on behalf of the company to restrain the enforcement of the tax upon its property in Michigan for 1903, and to test the constitutionality of the ad valorem tax law and the question of its application to unincorporated express companies.

The details of this case are given in the 1908 report (p. 27).

The case has been at issue for some time and a large amount of testimony has been taken by both sides. This testimony has been fully

abstracted; the briefs are practically completed and the case is ready for argument and will be heard this fall.

During the period of non-payment of the tax the company is subject to a penalty of twelve per cent per annum which has about doubled the amount of the original tax.

The hearing has been somewhat delayed by the fact that a new judge was about to be appointed and it was thought by counsel to be to the State's interest to have the case heard by this judge.

Pacific Express Company vs. Perry F. Powers, Auditor General, et al., Number 3846.

Pacific Express Company vs. James B. Bradley, Auditor General, et al., Number 3878.

Pacific Express Company vs. James B. Bradley, Auditor General, et al., Number 3919.

These are bills of complaint filed by the express company to restrain the defendants from proceedings to enforce against its property the taxes assessed thereon for the years 1903, 1904 and 1905.

For detailed information about these cases see the report for 1908 (p. 28).

By stipulation Auditor General Fuller and members of the State Board of Assessors, Shields, Hoyt and Thompson were substituted for the defendants named in the bills.

A large amount of testimony has been taken by both parties to the case; this has been fully abstracted and briefs prepared; the case is now ready for hearing, and will be heard in the near future.

The hearing has been somewhat delayed by the fact that a new judge was about to be appointed and it was thought by counsel to be to the State's interest to have the cases heard by this judge.

Daniel B. Scully and Maurice H. Scully vs. Arthur C. Bird, Dairy and Food Commissioner. Bill for injunction. Decree of this court dismissing the bill was reversed by the supreme court of the United States (209 U. S. 481) and the case is remanded for further proceedings. (See 1908 report, p 22). Motion to set aside the order entered March 7, 1907, taking the bill of complaint pro confesso against defendant, etc., sent to the clerk, etc., October 9, 1908. Answer of defendant, sent to the clerk, October 19, 1908.

Detroit, Grand Haven & Milwaukee Railway Company vs. James B. Bradley, Auditor General (Equity No. 3965).

This is a bill filed by the railway company for the purpose of restraining the enforcement of the taxes assessed against its property for the years 1906-1907 under Act 173, P. A. 1901, on the ground that it is protected from such taxation by a special charter.

The questions presented in this case are adjudicated by recent decisions of the state Supreme Court in cases against this company.

NOTE.—For details of this proceeding see 1908 report, p. 29.

The United States of America vs. John W. McGinn and A. L. Algate. (In re lands of the Cheboygan Indians.)

The Sperry & Hutchinson Company vs. Franz C. Kuhn, Attorney General of the State of Michigan. (In re "Trading Stamp Law.")

CHANCERY CASES PENDING-Supreme Court, of Michigan.

Detroit & Mackinac Railway Company vs. Michigan Railroad Commission. (There are several intervening parties.) Appeal from Wayne circuit, in chancery. Bill for injunction to restrain enforcement of a certain rate.

Title Guaranty & Surety Company vs. State of Michigan, Fidelity & Deposit Company, of Maryland, et al., defendants and appellants. Appeal from Ingham circuit, in chancery.

The People of the State of Michigan, represented by Oramel B. Fuller, Auditor General, and Franz C. Kuhn, Attorney General, vs. Detroit, Grand Haven & Milwaukee Railway Company, defendant and appellant. Appeal from Kent circuit, in equity. (See statement among chancery cases, disposed of, for details.)

Franz C. Kuhn, Attorney General, ex rel. Milton A. McRae, complainant and appellant, vs. Wm. B. Thompson, et al., and Common Council of Detroit. Appeal from Wayne circuit, in chancery.

CHANCERY CASES PENDING-Circuit Courts, and Superior Court.

Engene Sunderlin, Commissioner of Banking, vs. State Bank of Fenton, et al. Bill for appointment of receiver, filed in June, 1897. Clarence Tinker, of Fenton, appointed receiver, June 19, 1897.

In the matter of the petition of Perry F. Powers, Auditor General, for the sale of certain lands for the taxes assessed thereon for the year 1891, and previous years. In re petition of Henry Platz vs. Perry F. Powers, Auditor General, and Arthur N. Englehardt. Presque Isle circuit, in chancery. Petition for review. ("Adjusted.")

In the matter of the petition of Perry F. Powers, Auditor General, for the sale of certain lands for the taxes assessed thereon for the year 1891, and previous years. In re petition of Henry Platz vs. Perry F. Powers, Auditor General, and William Spens. Petition for review. Presque Isle circuit, in chancery. ("Adjusted.")

Benjamin C. Morse vs. Edwin A. Wildey, Commissioner of the State Land Office, and Perry F. Powers, Auditor General. Alpena circuit, in chancery.

William H. Johnson and Esther E. Collins vs. Perry F. Powers, Auditor General, and Charles Jaeger. Presque Isle circuit, in chancery.

Robert H. Rayburn, William H. Campbell and William Denton vs. The Auditor General. Montmorency circuit, in chancery.

In the matter of the petition of Perry F. Powers, Auditor General, for the sale of certain lands for the taxes assessed thereon for the years 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893. In re petition of Samuel A. Davidson vs. Perry F. Powers, Auditor General, and Edwin A. Wildey, Commissioner of the State Land Office. Montmorency circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes of 1899. In re petition of Henry Beebe vs. The Auditor General, and John A. Miller. Alpena circuit, in chancery. ("Adjusted.")

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes assessed thereon. In re petition of Charles Keating vs. The Auditor General, the Commissioner of the State Land Office, and Swan Rode. Alpena circuit, in chancery.

Alexander McQueen vs. Auditor General. Bill to set aside taxes. Montmorency circuit, in chancery.

In re petition of Herman Besser to set aside sales of certain lands for taxes of 1887 to 1896, inclusive. Montmorency circuit, in chancery.

In re petition of Herman Besser to set aside sales of certain lands for taxes of 1881 to 1886, inclusive. Montmorency circuit, in chancery.

Henry Platz vs. The Auditor General, et al. Presque Isle circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes assessed thereon. In re petition of Estate of Albert Pack vs. the Auditor General. Montmorency circuit, in chancery.

Henry Bolton vs. The Auditor General, the Commissioner of the State Land Office and the Hecla Portland Cement and Coal Company, and Detroit Trust Company. Alpena circuit, in chancery. (Disposed of by Peter Owens case.)

Henry K. Gustin vs. The Auditor General, the Commissioner of the State Land Office, the Hecla Portland Cement and Coal Company and and Detroit Trust Company. Alpena circuit, in chancery. (Disposed of by Peter Owens case.)

Huron Land Company, Limited, vs. The Auditor General, the Commissioner of the State Land Office, Edward H. Gillman, trustee and The Turtle Lake Hunting and Fishing Club. Alpena circuit, in chancery. ("Adjusted.")

Peter Owens vs. The Auditor General, the Commissioner of the State Land Office and Herschel H. Hatch. Alpena circuit, in chancery.

Charles B. Williams vs. The Auditor General, the Commissioner of

the State Land Office, Edward H. Gillman, trustee, et al. Alpena circuit, in chancery.

Estate of George N. Fletcher vs. The Auditor General, the Commissioner of the State Land Office, Robert Beutel and Morris L. Court-right. Alpena circuit, in chancery.

Henry Platz, Administrator of the Estate of Fred Lincoln, deceased, vs. The Auditor General, the Commissioner of the State Land Office, Albert C. Beutel, Mrs. Albert C. Beutel and Isabella Seymour. Alpena circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed against the same for the years 1894, 1897, 1899, 1895, 1896 and 1898. George B. Holmes, petitioner, vs. Auditor General. Montmorency circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the years 1889, 1890, 1894, 1896, 1897, 1898, 1899 and 1900. Malcolm McPhee, petitioner, vs. Auditor General, Presque Isle circuit, in chancery.

The Estate of Albert Pack, deceased, by Arthur Pack, et al., vs. Auditor General and Commissioner of the State Land Office. Presque Isle circuit, in chancery.

Frank A. Turnbull, et al., vs. Auditor General. Presque Isle circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1898. Charles Wiltsie, petitioner, vs. Auditor General. Montmorency circuit in chancery.

William K. Anderson, et al., vs. Township of Greenfield, et al., and Board of State Tax Commissioners. Wayne circuit, in chancery. Under Stipulation of April, 1905, decree to be entered like decree in Delray Land Co. case.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1900 and prior years. Frank G. Kneeland, petitioner, vs. Auditor General. Gratiot circuit, in chancery.

Frank Hoffman, et al., vs. Frank E. Palmer, et al., and Auditor General. Oscoda circuit, in chancery.

The People of the State of Michigan ex rel. John E. Bird, Attorney General, vs. Independent Order of the Red Cross. Wayne circuit, in chancery. Proceedings for appointment of receiver. Henry J. Eikhoff appointed, April 5, 1905.

James B. Peter vs. Auditor General. Tuscola circuit, in chancery.

George L. Maltz, Commissioner of the Banking Department, vs. City Savings Bank of Detroit, et al. Wayne circuit, in chancery. Proceedings for appointment of receiver. Union Trust Co., of Detroit, was appointed receiver, February 11, 1902.

Merritt Chandler vs. Sarah E. Kinde and Auditor General. Cheboygan circuit, in chancery.

Merritt Chandler vs. John St. Peter, et al., and Auditor General. Cheboygan circuit, in chancery.

The Standard Hoop Company, Limited, vs. Cora A. Lawrence Alling and James B. Bradley, Auditor General. Otsego circuit court, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed thereon for the year 1884. Matilda R. Male vs. Archie T. Miller and Auditor General. Alpena circuit, in chancery.

Maria M. Smith vs. James B. Bradley, Auditor General, William H. Rose, Commissioner State Land Office, William McLaughlin, County Drain Commissioner. St. Joseph circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes assessed for the years 1889-1902. William A. Blackburn and Will A. Prince vs. James B. Bradley, Auditor General. Alpena circuit, in chancery.

John E. Bird, Attorney General, ex rel. Village of Trenton, Township of Monguagon (Gross Isle) and the Sibley Quarry Company (a corporation), vs. City of Wyandotte, Wayne circuit, in chancery.

Myron J. Sherwood vs. Isaac Erickson and James B. Bradley, Auditor General. Gogebic circuit, in chancery.

Herman L. Swift, sole trustee for the Beulah Land Farm for Boys, vs. Wm. H. Caldwell, J. W. Caldwell and James B. Bradley, Auditor General. Charlevoix circuit, in chancery.

In re petition of the Auditor General for the sale of certain lands for the taxes of 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1901 and 1902. L. D. Closser vs. Auditor General. Alpena circuit, in chancery.

The Triangle Land Company, a corporation, vs. John Hawley, James B. Bradley, Auditor General, defendant to cross-bill of defendant John Hawley. Bill to quiet title. Ontonagon circuit, in chancery.

John E. Bird, Attorney General, ex rel. B. Harriet Boydell, vs. Boydell Bros. White Lead & Color Works. Wayne circuit, in chancery.

Charles R. Henry vs. George Stovel et al., James B. Bradley, et al. Alpena circuit, in chancery.

James E. Sherman vs. Donald McRae, as administrator estate of John McRae, deceased, and James B. Bradley, Auditor General. Ontonagon circuit, in chancery.

Henry M. Zimmermann, Com'r. of the Banking Department of the State of Michigan, vs. Chelsea Saving Bank, et al. Washtenaw circuit, in chancery. Bill for appointment of receiver. W. W. Wedemeyer, appointed receiver, December 5, 1907.

James D. Turnbull vs. James B. Bradley, Auditor General, and Flavia Parrant. Alpena circuit, in chancery. Decree filed, April 29, 1908. (Claim of appeal filed, in June, 1908).

W. & A. McArthur Co., Limited, and other complainants, vs. Auditor General, et al.; petition of James W. Farrier, Treasurer of Montmorency county, that decrees be reopened. Montmorency circuit, in chancery.

Edward E. Ayer and other complainants, vs. Auditor General, et al.; Petition of John Hoeft, Jr., Treasurer of Presque Isle County to re-open decrees. Presque Isle circuit, in chancery.

Henry M. Zimmermann, Commissioner of Banking, vs. United Home Protectors' Fraternity. St. Clair circuit, in chancery. Bill for appointment of receiver. Horace G. Snover, of Port Huron, appointed receiver, March 31, 1908.

The Grand Trunk Railway Company vs. Cassius L. Glasgow, George W. Dickinson, and James Scully, constituting the Michigan Railway Commission and the Detroit United Railway Company. Wayne circuit, in chancery. (Action to secure reversal of a certain order In re Sweers & Prefrock, et al., vs. G. T. Ry. Co.)

Huron Land Company, Limited, vs. Detroit & Mackinac Railway Company, James D. Hawks, trustee, H. S. Waterman and James B. Bradley, Auditor General. Alpena circuit, in chancery.

Henry M. Zimmermann, Commissioner of Banking, vs. Farmers & Merchants State Bank of Parma, Michigan, et al. Jackson circuit, in chancery. Bill for appointment of receiver, etc. Seymour H. Godfrey, appointed receiver, September 8, 1908.

John E. Bird, Attorney General, ex rel. The People of the State of Michigan, vs. The Continental Sugar Company, a corporation. Lenawee circuit, in chancery.

Pere Marquette Railroad Company, a corporation, vs. Michigan Railroad Commission and Michigan United Railways Company. Wayne circuit, in chancery.

John L. Doyle, vs. The North Shore Lumber Company, Frank Roxbury and Auditor General. Schoolcraft circuit, in chancery.

In re Petition of the Auditor General of the State of Michigan for the foreclosure of the lien of the State of Michigan for the taxes of 1891, 1892, 1893 and 1894. John L. Doyle, petitioner, vs. North Shore Lumber Company and Auditor General. Schoolcraft circuit, in chancery.

John E. Bird, Attorney General, ex rel. Township of Wyoming, et al., vs. The City of Grand Rapids, et al. Superior court of Grand Rapids, in chancery.

Dayton W. Closser and Lenore D. Closser, vs. Benjamin Robarge and Oramel B. Fuller, Auditor General. Alpena circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes for the years 1901, 1902, 1903 and 1904. Henry K. Gustin, petitioner, vs. Auditor General. Alpena circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for taxes of the years 1901, 1902, 1903 and 1904. Henry K. Gustin, Cloverdale Land Company, Limited, American Cedar & Lumber Company, petitioners, vs. Oramel B. Fuller, Auditor General. Alcona circuit, in chancery.

In the matter of the petition of the Auditor General for the sale of certain lands for the taxes of the years 1901, 1902, 1903 and 1904. Henry K. Gustin, petitioner, vs. Oramel B. Fuller, Auditor General. Cheboygan circuit, in chancery.

S. Harris Embury vs. Lodema O. Goodenough, Emery D. Weimer and Oramel Fuller, Auditor General. Mackinac circuit, in chancery.

Jessie M. Leland vs. The Unknown Heirs of John Griffith, et al., and Oramel B. Fuller, Auditor General. Allegan circuit, in chancery.

Caroline M. Clothier & Lenore D. Closser vs. The Peninsular Bark & Lumber Company, Oramel B. Fuller, Auditor General, and David I. Miller. Chippewa circuit, in chancery.

Orange S. Mason, et al., vs. Judson E. Rice, Commandant, E. B. Taylor, Adjutant, and the Board of Managers of the Michigan Soldiers' Home. Kent circuit, in chancery.

Manistee & Luther Railroad Company vs. Michigan Railroad Commission. Manistee circuit, in chancery.

Isabelle Lincoln, Horatio Ferguson and William Kavanagh vs. Charles S. Pierce, State Game, Fish and Forestry Warden, and Robert E. Ellsworth, Deputy State G., etc., Warden, et al. Alpena circuit, in chancery. Bill for injunction.

The Grand Rapids & Indiana Railway Company vs. The Michigan Railroad Commission. Kent circuit, in chancery, No. 16220.

State of Michigan, by John E. Bird, Attorney General, vs. Board of Control of St. Clair Flats. St. Clair circuit, in chancery. Bill for injunction to restrain issuing to George L. Sampson, or to any other person, firm or corporation, filing a claim for any of the premises known as the St. Clair Flats, in St. Clair county, Michigan, a certificate or deed as provided for in and by the terms of Act 215, P. A. 1909. During the 1911 session of the legislature a bill was introduced to adjust this case but the bill did not pass.

Michigan Central Railroad Company, and others, vs. Michigan Railroad Commission. Wayne circuit, in chancery. No. 36364.

C. C. Douglas Company, et al., vs. Millard D. Olds, Wm. H. Louks, and Oramel B. Fuller, Auditor General. Baraga circuit, in chancery.

The Pontiac, Oxford & Northern Railroad Company vs. Michigan Railroad Commission. Ingham circuit, in chancery. (In re passenger rates.)

The Germania Refining Company a foreign corporation, et al., vs. Oramel B. Fuller, Auditor General, et al., Ingham circuit, in chancery.

Merritt Chandler vs. Richardson Lumber Co., and James B. Bradley, Auditor General. Otsego circuit, in chancery.

The Oneida Land Company vs. Oramel B. Fuller, Auditor General, et al. Ontonagon circuit, in chancery.

John W. McGinn, vs. A. L. Algate, et al. Cheboygan circuit, in chancery. (In re Cheboygan Indians' lands.) (See also United States vs. John McGinn, et al.)

John M. Longyear, et al., vs. Charles C. Hopkins, and Oramel B. Fuller, Auditor General. Gogebic circuit, in chancery.

Grand Rapids & Indiana Railway Company vs. Michigan Railroad Commission. Kalamazoo circuit, in chancery. (In re crossing in Kalamazoo.)

In re Petition of the Commissioner of Insurance for appointment of a Receiver for Citizens' Mutual Fire Insurance Company of Charlevoix, Emmet and Cheboygan Counties. Emmet circuit, in chancery. Frank L. Voorheis, of Harbor Springs, appointed and trust accepted, June 22, 1911.

Roger W. Butterfield vs. Frank Robinson, Drain Commissioner, et al., Muskegon circuit, in chancery.

John D. McPhee vs. W. H. White Company, a corporation, et al. Otsego circuit, in chancery.

John B. McCullough vs. Unknown Heirs, of Elias M. Axford, and Auditor General. Oakland circuit, in chancery.

Michigan Salt Works vs. John Baird and William Hodgson. St. Clair circuit, in chancery. Bill for injunction.

SCHEDULE "E."

Statement of proceedings for the collection of escheated estates.

ESCHEATED ESTATE MONEYS RECEIVED.

In re Mary Greer, deceased, paid, Sept. 17, 1910..	\$450 00	
In re Mary Greer, balance of estate, paid, Jan. 3 1911	62 81	\$512 81
In re John Dowser, deceased, paid, Feb. 18, 1911		1,176 30
In re Emma Reidy, deceased, paid, April 7, 1911		1,760 64
(See also "Costs of Suits" recovered, Schedule "I.")		
Total		\$3,449 75

ESCHEATED ESTATE CASES DISPOSED OF-Supreme Court.

Estate of Emma Reidy, deceased, *John Dudeck*, claimant and appellee, vs. John A. Watson, administrator, contestant and appellant. Error to Shiawassee circuit. John Dudeck presented a claim against the estate of Emma Reidy deceased, for services rendered. The claim was allowed in the probate court and the Attorney General appealed to the circuit court. A judgment for claimant is reviewed by contestant on writ of error. Submitted April 15; reversed and new trial ordered, July 14, 1910. 162 Mich. 154. (Discontinuance entered in circuit court, January 23, 1911.)

Estate of Emma Reidy, deceased, *George O. Shattuck*, claimant and appellee, vs. John A. Watson, administrator, contestant and appellant. Error to Shiawassee circuit. A claim by George O. Shattuck against this estate was disallowed by the commissioners, but on appeal to the circuit court claimant recovered judgment for the full amount claimed and the administrator brings error. Reversed and judgment entered against claimant, December 30, 1910. 164 Mich. 167.

ESCHEATED ESTATE CASES DISPOSED OF-Circuit Courts.

In re John Burgin, deceased. Appeal from commissioners on claims. Circuit court, Shiawassee county. Appeal from probate court. In re claims of Fred Keyes, Mrs. H. A. Keyes and Mary Ripley. Dismissed by consent of attorneys, February 20, 1911. (See further proceedings in probate court.)

ESCHEATED ESTATE CASES DISPOSED OF-Probate Courts.

In re James Coleman, deceased. Probate court, St. Joseph county. Petition for order that \$1,214.71 be turned over to board of escheats, was filed by the Attorney General in October, 1901, and in January, 1902, the Attorney General was advised by the judge of probate that "parties interested claimed estate."

A letter from the judge of probate (dated, September 20, 1911), stated— " * * * the last proceedings in the probate court was a petition filed by a person alleging themselves to be an heir, and entitled to the fund which had been deposited in the office of the county treasurer, this petition was denied. * * * However, a proceeding was commenced in the chancery court, and by a decree of the circuit judge the fund has been paid to the attorneys of the party. So the fund has been taken under order of the circuit judge by persons who claim to be entitled thereto."

The circuit court "calendar entries" show that a "bill to declare will in-operative" was filed in January, 1904, by Ellen O. Wyatt, administrator, etc., vs. The Legatees in the will of James Coleman, deceased, and "Final order and decree" was filed and entered, February 7, 1911, in the St. Joseph circuit.

In re Martha Sheldon, deceased. Barry county. There was about \$100.00 involved in this matter, but after the petition was filed a letter was received from the judge of probate stating—"The will of Martha Sheldon disposes of the amount in that estate on deposit with the county treasurer, in case the legatee cannot be found, and it is not payable in any case until the death of DeWitt C. Sheldon, who is still living." (Sept. 23, 1907.)

Jeremiah Wilbur, deceased. Barry county. There was about twenty-five dollars, involved in this matter, but after the petition was filed a letter was received from the judge of probate, stating—"Jeremiah Wilbur left a brother who resides in the township of Assyria, and who would be entitled to inherit the amount now on deposit in the office of the county treasurer, after the expiration of eight years." (Sept. 23, 1907.)

In re Emma Reidy, deceased, Shiawassee county. Estate consisted of a stock of drugs, valued at about \$1,500.00, stocks, certificates of deposits and cash in bank, about \$2,000.00 and real estate of about \$2,000.00. Hearing, March 22, 1909, on petition of administrator for 250.00 for monument and petition granted. Order to sell certain personal property, entered, March 22, 1909.

The claims of John Dudeck and George O. Shattuck, were settled by the supreme court (as stated in the preceding part of this schedule) and the residue of the estate was duly turned over to the State Board of Escheats.

In re William Crawford, deceased, Wayne county. There was about \$1,524.12 shown by report of administrator as balance on hand, but after the petition was filed by the Attorney General further information was

submitted to this department and a letter was written the register of probate, stating “* * * we have made some investigation along the line of ascertaining the honesty and reliability of the Scotland claimants to said estate. Our advices are of such a character that we feel that they are the lawful heirs of William Crawford, deceased, and therefore do not care to press the petition filed in the matter on behalf of the State. If the court is satisfied that we have reached the correct conclusion in the matter, the petition filed by the state may be dismissed. * *”

In re John Dowser, deceased. Van Buren county. Order entered by the probate court, January 16, 1911, determining the State board of Escheats to be heirs for the State to the personal property, consisting of notes, etc., and real estate, consisting of lots four, five and six (except the east ten feet of lot four), block twelve of Scott's addition to the village of Mattawan, Van Buren county.

ESCHEATED ESTATE CASES PENDING-Probate Courts.

In re George C. Palmer, deceased, Muskegon county.

In re L. Fuller, deceased, Wayne county.

In re Frank Gabriel, deceased, Macomb county.

In re John Burgin, deceased. (Appeals from Commissioners' claims disposed of in circuit court,—as stated in the preceding part of this schedule.)

SCHEDULE "F."**Statement of inheritance tax proceedings.**

INHERITANCE TAX CASES DISPOSED OF-Probate Courts.

In re E. Crofton Fox. Kent county. From a judgment of the circuit court, on appeal from the probate court, the estate appealed to the supreme court. Submitted in supreme court, April 13, and affirmed, September 10, 1908. (154 Mich. 5.) Motion for re-hearing on behalf of the estate, submitted, in March, 1909, and re-hearing granted May 25; cause re-argued June 14, and former opinion vacated, December 31, 1909. (159 Mich. 420.) Tax as determined December 31, 1909, \$784.32, and interest, \$241.04 (total, \$1,025.36), paid, October 15, 1910.

In re Samantha L. Woolsey, Wayne county. A tax of \$55.28 was determined, March 19, 1906, but the matter was appealed from the probate to the circuit court. Appeal was argued in the circuit court, May 2, 1907. Order holding the transfers taxable and remanding the matter to the probate court signed, by circuit judge, and entered, July 3, 1907. The probate court determined the tax at \$80.28, Feb. 4, 1910; \$25.00 of tax and interest, \$8.40 (total, \$33.40), was paid, May 10, 1911. (Balance due is stated in last part of schedule.)

In re Herman W. Stevens, St. Clair county. Petition to correct order determining inheritance tax and for re-payment of same. Order denying petition, etc., March 14, 1911.

In re Emma J. Hatch, Washtenaw county. Tax, \$213.31, and interest, \$111.06 (total, \$324.37), paid, July 8, 1910.

In re Jerome B. Galloway, Oakland county, " * * * estate decreed settled," January 18, 1911 (shown by copy of court entries, received, January 31, 1911).

In re Arthur J. Schloss, Wayne county. Petition for refunding of inheritance tax. "Upon investigation Attorney General's Dept. decides to interpose no objections to the granting of the prayer of the petition."

In re Evert V. W. Brokaw, St. Clair county. Petition for rehearing filed in May, 1911. Additional tax determined, May 24. Tax of \$72.00 and \$8.00 (\$80.00)—paid,—less discount of \$4.00,—\$76.00, May 29, 1911.

In re Rosa Northey, Houghton county. Tax, \$1,153.04; interest, \$380.76; total, \$1,533.80, paid, June 5, 1911.

In re Matthew Northey, Houghton county. Tax, 64.92; interest, \$30.07; total, \$94.99, paid, June 5, 1911.

INHERITANCE TAXES DETERMINED.—But *not* paid or only *partially* paid; also showing cases where lis pendens has been filed to enforce payment of the tax, and amount of tax *now* due:

Name of estate of deceased.	County.	Tax due.	Determined.	Lis pendens filed.
Mary Callen (tax not determined).....	Kent.....			Aug. 10, 1903
Edward J. Hulbert (tax not determined).....	Wayne.....			Sept. 1, 1904
Florence Codde.....	Wayne.....	\$86 75	May 18, 1908	Sept. 17, 1904
James Owens.....	Lapeer.....	161 68	Jan. 18, 1905	Nov. 1, 1905
Forester Allison.....	Washtenaw.....	1 25	Feb. 6, 1904	Nov. 1, 1905
Thomas D. Sealey.....	Livingston.....	17 46	Feb. 19, 1904	Nov. 1, 1905
Samantha L. Woolsey.....	Wayne.....	55 28	Feb. 4, 1910

INHERITANCE TAX CASES PENDING-Probate Courts.

In re Brooks B. Hazleton, Washtenaw county. A tax of \$308.35, was determined, May 9, 1904, but a petition for an additional tax was filed in June, 1904.

In re Clark J. Whitney, Wayne county.

SCHEDULE "G."

Statement of proceedings relative to insane persons confined in State hospitals containing: (a) Statement of money collected and paid to the State through the efforts of Attorney General, with the co-operation of medical superintendents of the various hospitals, Auditor General and judges of probate, as reimbursement to the State for the support of certain insane persons in State hospitals;

(b) Statement of status of proceedings for reimbursement.

(c) Statement of money collected and paid to the State:

Name of patient.	County.	Amount.	Total.
*MICHIGAN ASYLUM:			
Adams, Anna C.....	Kent.....	\$140 00	
Albers, Henry J.....	Allegan.....	25 00	
Anable, Helen.....	Monroe.....	60 00	
Anthony, Peter B.....	Ingham.....	120 00	
Armstrong, Joseph.....	Kent.....	48 00	
Bailey, Mattie J.....	Hillsdale.....	100 00	
Baker, Emma J.....	Hillsdale.....	50 00	
Barlow, R. W.....	Ingham.....	75 00	
Bass, James H.....	Kent.....	144 00	
Battershaw, Alaina.....	Eaton.....	158 00	
Beers, Sarah Ethel.....	Hillsdale.....	97 50	
Binder, Fredericka.....	Calhoun.....	125 00	
Boardman, Margaret.....	Jackson.....	148 53	
Bonton, Mary L.....	Calhoun.....	90 00	
Brewer, Lydia W.....	Kalamasoo.....	65 00	
Briggs, Thursey J.....	Kalamasoo.....	126 00	
Brooks, George.....	Van Buren.....	25 00	
Buck, Mary E.....	Lenawee.....	500 00	
Cameron, Nellie M.....	Eaton.....	14 00	
Card, Chlorinda.....	Branch.....	114 00	
Cheeseaman, Chas.....		15 50	
Coughlin, Mary.....	Van Buren.....	200 00	
Daniels, Elsie E.....	Jackson.....	321 00	
Donahue, John.....	Berrien.....	144 00	
Donahue, Joseph.....		50 00	
Doughty, Isaac.....	Kent.....	168 00	
Elbert, John Edward.....	Kent.....	101 00	
Failing, Lovina.....	Calhoun.....	120 00	
Felton, Emma.....	Kent.....	132 00	
Fox, Nellie.....	Eaton.....	182 75	
Gibbs, W. S.....	Kent.....	90 90	
Gorton, Lucy L.....	Barry.....	30 00	
Griffin, Ross A.....	Kent.....	130 00	
Hardesty, Alex.....	Kent.....	108 00	
Hasen, Eliza.....	Allegan.....	52 00	
Hong, Martha.....	Lenawee.....	26 00	
Hodgetts, Geo.....	Kent.....	167 00	
Iliff, Nancy.....	Allegan.....	100 00	
King, Margaret.....	Kent.....	46 00	
King, Russell R.....	Kent.....	180 00	
Koesch, Anton.....	Kent.....	90 75	
Leiby, John B.....	Kent.....	105 00	
Lord, Herbert J.....	Eaton.....	347 71	
Leeb, William.....	Branch.....	6 70	
McCall, Thomas D.....	Kent.....	455 09	

Name of patient.	County.	Amount.	Total.
Michigan Asylum—Con.			
McKinnis, Clarence A.	Eaton	\$228 35	
Maltby, Chancy S.	Eaton	144 00	
Merriman, Harriett A.	Kalamasoo	200 00	
Miner, Jennie	Ottawa	1 75	
Morris, James	Kent	297 38	
Murray, James	Eaton	178 50	
Niles, Lewis H.	Hillsdale	120 00	
Novier, Marie	Eaton	45 50	
O'Neal, Charles	Kent	170 00	
Obmstead, Lydia	Eaton	88 50	
Orman, Conrad	Berrien	8 00	
Parmeter, Samuel	Kent	110 00	
Parnyes, Daniel	Monroe	133 50	
Peck, Geo. W.	Barry	166 10	
Pike, Sylvanus M.	Allegan	52 00	
Porter, Eliza	Allegan	180 00	
Pulsipher, Julian	Allegan	130 00	
Rice, Emma R.	Kent	75 00	
Rock, Charles	Clinton	119 99	
Rockwood, Geo. A.	Branch	32 12	
Ruehle, John	Allegan	188 00	
Seelman, Katie	Ottawa	183 35	
Shanafelt, Daniel	Kent	150 00	
Shook, Edward	Kalamasoo	50 00	
Simmons, Lela	Lenawee	50 00	
Smith, Clara B.	Van Buren	98 78	
Smith, Samuel	Kent	45 85	
Snyder, Harriet		15 00	
Spafford, Fred'k Chas.	Lenawee	500 00	
Sylvester, Betsey	Kent	60 00	
Underwood, Chloe	Eaton	70 00	
Upright, John	Eaton	75 00	
Upton, Stephen C.	Jackson	191 32	
Van Camp, Henry H.	Van Buren	147 38	
Vander Laan, Bougien	Kalamasoo	24 00	
Webster, Wm. H.	Kent	60 00	
Weidein, Matilda		23 00	
Whitcomb, Catharine E.	Branch	50 00	
Whiteside, Wm.	Kalamasoo	300 00	
Willard, Haven	Van Buren	143 00	
Winterhalter, Wm. E.	Kent	130 00	
†EASTERN MICHIGAN ASYLUM:			\$10,479 80
Adams, Mary S.	Wayne	\$175 00	
Alabaster, Addie	Washtenaw	271 85	
Beach, Aurilla	Oakland	191 24	
Boyce, Ella	Washtenaw	1,357 97	
Brockway, Elias	Livingston	58 50	
Carpenter, Wm. H. M.	Bay	120 00	
Church, Andrew C.	Wayne	90 00	
Cody, Elijah	Lapeer	108 00	
Cook, Janette	Saginaw	45 00	
Eaton, Benjamin	Saginaw	273 00	
Fallott, Louise	Shiawassee	23 14	
Fox, E. Jennie	Wayne	33 15	
Frey, John A.	Washtenaw	144 00	
Hackenberg, Hudwig	Wayne	45 50	
Homer, Henry	Saginaw	43 86	
Hurd, Mary J.		8 00	
Lewis, Ellen	Wayne	186 04	
Lewis, Mary S.	Sanilac	16 68	
McQuade, Mary J.	Macomb	117 70	
Marks, Martha M.	Oakland	101 99	
Marzell, Melissa	Sanilac	134 00	
Momberg, Emma	Bay	95 22	
Mortimer, Charles	Sanilac	114 75	
Nehls, Jochim	Saginaw	33 17	

Name of patient.	County.	Amount.	Total.
Eastern Michigan Asylum—Con.			
Noble, Grace.....	Oakland.....	\$185 54	
Nolan, Anna.....	St. Clair.....	4 00	
Peek, Harvey.....	Charlevoix.....	185 24	
Ranney, Orville W.....	Wayne.....	45 90	
Schneider, Fred A.....	Washtenaw.....	562 21	
Simons, Martha.....	Washtenaw.....	142 24	
Stewart, Grace D.....	Wayne.....	182 50	
Truscott, John M.....	Shiawassee.....	183 84	
			\$5,279 01
†UPPER PENINSULA HOSPITAL FOR INSANE:			
Denning, Margaret Ann.....	Mackinaw.....	\$108 00	
La Point, Louisa.....	Schoolcraft.....	16 00	
Moulding, Anna M.....	Mackinaw.....	226 25	
Swanson, Ida.....	Delta.....	200 00	
			550 25
MICHIGAN HOME FEEBLE-MINDED AND EPILEPTIC:			
Cluney, Basil.....	Wayne.....	\$45 00	
Corgan, Mattie.....	Ontonagon.....	48 00	
Richings, Harry.....	Branch.....	146 88	
Schmidt, Gertrude J.....	Eaginaw.....	27 84	
Spicknell, Grace May.....	Wayne.....	4 00	
			271 72
§NORTHERN MICHIGAN ASYLUM:			
Bong, Leonard.....	Cheboygan.....	\$201 06	
Byron, Kate.....	Alpena.....	75 00	
Clark, Charloroy.....	Wexford.....	120 00	
Cotter, Dennis.....	Missaukee.....	91 22	
Hart, Olive E.....	Gratiot.....	190 00	
Manion, John.....	Gratiot.....	300 00	
Morse, Mary E.....	Muskegon.....	100 00	
Smith, Mary.....	Muskegon.....	140 00	
Snyder, Addie E.....	Ionia.....	270 55	
Taylor, Hannah G.....	Ionia.....	193 21	
Thomas, Dan C.....	Ionia.....	183 55	
			1,864 59
WAYNE COUNTY ASYLUM:			
Alting, May.....	Wayne.....	\$273 50	
Alter, Joseph.....	Wayne.....	90 50	
Jungnickel, Christina.....	Wayne.....	140 00	
Krants, Joseph.....	Wayne.....	182 50	
Thompson, Ida Belle.....	Wayne.....	302 50	
			969 00
PSYCHOPATHIC WARD (U. of M.):			
Bailey, Mattie J.....	Hillsdale.....	\$50 00	
Campbell, Barbara E.....	Shiawassee.....	7 00	
Chamberlain, Chas.....	Wayne.....	169 29	
Ellis, Mrs. Lissie.....	Hillsdale.....	10 00	
Grahn, Clara.....	30 00	
Graves, Mary.....	Kent.....	98 00	
Lathrop, Walter.....	Wayne.....	50 00	
Rosenburg, Henry.....	Ottawa.....	110 00	
Voorheis, Julia.....	Oakland.....	50 00	
			574 29
Total for all hospitals.....			\$20,008 66

*Name changed to Kalamazoo State Hospital by Act 21, P. A. 1911.

†Name changed to Pontiac State Hospital by Act 21, P. A. 1911.

‡Name changed to Newberry State Hospital by Act 21, P. A. 1911.

§Name changed to Traverse City State Hospital by Act 21, P. A. 1911.

RE-IMBURSEMENT MATTERS.—CIRCUIT COURTS.

People vs. Charles Taylor. Ionia circuit court. Suit to recover cost of maintenance at State Asylum; submitted Jan. 8, 1910; April 8, 1911, judgment rendered for \$1,324.18 and costs.

RE-IMBURSEMENT MATTERS DISPOSED OF.—PROBATE COURTS.

Moses Dubrey. Michigan Asylum. Probate court, Kent county. Petition filed February 19, 1910. Pending hearing on petition Mr. Dubrey died. (See estate of Moses Dubrey—matters pending.)

Charles S. Spafford. Michigan Asylum. Probate court, Lenawee county. Petition filed May 12, 1910. Order made Sept. 10, 1910, payment of \$500.00.

Estate of Mary E. Morse, Michigan Asylum. Probate court, Muskegon county. Petition to revive commission on claims, July 15, 1910. Order of compromise entered. State to receive \$100.00 on or before Sept. 15, 1910.

Louisa LaPoint. U. P. Hospital. Probate court, Schoolcraft county. Petition filed January, 1911; February 27, 1911, guardian ordered to pay \$16.00 to State Treasurer.

Samuel Smith. Michigan Asylum. Probate court, Kent county. Petition filed February 25, 1911; order made March 14, 1911, pay balance of estate to State Treasurer.

Eliza Boyce. E. Michigan Asylum. Probate court, Washtenaw county. Petition filed March 3, 1911; order made March 22, 1911, pay \$150.51 within twenty days.

Estate of William Boyce. Probate court, Washtenaw county. Petition for payment of State claim allowed against estate of William Boyce, deceased, husband of Eliza Boyce; March 21st order made directing payment of claim and filing final account of administrator.

Ross A. Griffin. Michigan Asylum. Probate court, Kent county. Petition filed April 11, 1911; May 5, 1911, order made pay \$100.00 and \$10.00 per month.

Thomas D. McCall. Michigan Asylum. Probate court, Kent county. Petition filed April 11, 1911. Order made directing payment of 455.09 and \$10.00 per month.

Samuel Parmeter. Michigan Asylum. Probate court, Kent county. Petition filed April 11, 1911; order made May 5, 1911, directing payment of \$80.00 and \$10.00 per month.

John B. Leiby. Michigan Asylum. Probate court, Kent county. Petition filed April 11, 1911; order made May 5, 1911, directing payment of \$75.00 and \$10.00 per month.

William H. Webster. Michigan Asylum. Probate court, Kent county. Petition filed April 11, 1911; order made May 5, 1911, directing payment of \$10.00 per month.

RE-IMBURSEMENT MATTERS PENDING.

Mary Ann Grimes. E. Michigan Asylum. Probate court, Genesee county. Petition filed January 18, 1910; order awaiting sale of property.

Emma Runyan. E. Michigan Asylum. Probate court, Oakland county. Petition filed May 18, 1910; pending adjustment of guardian's account.

John DeMay. Michigan Asylum. Probate court, Kent county. Petition filed February 19, 1910. This matter is being continued pending a settlement of the guardian's account.

Katherine Wegst. E. Michigan Asylum. Probate court, Saginaw county. Petition filed November 5, 1910. Pending.

Estate of Robert McNeal. Michigan Asylum. Probate court, Kent county. Petition filed for the appointment of an administrator April 11, 1911; pending settlement of the administrator's accounts.

John Achterhof. Michigan Asylum. Probate court, Ottawa county. Petition filed for reimbursement June 5, 1911; hearing set for July 10, 1911.

Martin H. Peterson. N. Michigan Asylum. Probate Court, Montcalm county. Petition for reimbursement filed June 12, 1911; pending.

George Saner. E. Michigan Asylum. Probate court, Wayne county. Petition for reimbursement filed June 29, 1911; pending.

Estate of Moses Dubrey. Probate court, Kent county. April 11, 1911, petition filed for the appointment of administrator; matter held pending settlement of administrator's account.

SCHEDULE "H."

Statement of assumpsit, ejectment, petition to vacate plat, trespass on the case proceedings, trover suit and miscellaneous cases.

ASSUMPSIT CASES DISPOSED OF-Supreme Court.

Consolidated Coal Company vs. Board of Trustees of the Michigan Employment Institution for the Blind, appellant. Case made from Saginaw circuit. Action to recover price of certain coal, furnished by plaintiff company, in which company James H. Malcolm was a stockholder and also a member of the board of trustees of the employment institution, and treasurer thereof. From a judgment for plaintiff, defendant appeals on case-made. Submitted on briefs, November 29, and reversed (with costs of both courts), December 30, 1910. 164 Mich. 235. (See also subsequent case in trover,—pending in this report.)

ASSUMPSIT CASES DISPOSED OF-Circuit Courts.

The People of the State of Michigan vs. Federal Union Surety Company. Ingham circuit. Assumpsit. Demurrer having been overruled by the Supreme Court (158 Mich. 30), the surety company paid part of its liability in fiscal year, 1910, and the balance in fiscal year, 1911. Order dismissing cause was signed by Attorney General and sent to clerk to file, June 8, 1911. (In re Chelsea Savings Bank.) (See Miscellaneous Cases pending for amount paid.)

The People of the State of Michigan vs. Charles Taylor. Ionia circuit. Suit to recover costs of maintenance at State Asylum at Ionia. Submitted, January 8, 1910. Judgment for plaintiff entered for \$2,401.54, and interest in quarterly payments, April 8, 1911, but letter from clerk, April 14, 1911, stated "Court has corrected said judgment as per agreement" "Judgment as now corrected will be for \$1,324.18, and interest at 5 per cent from Jan. 12, 1910, to April 8, 1911,—whole amount being \$1,393.58 and judgment is entered for last amount."

William W. Wedemeyer, Receiver of the Chelsea Savings Bank vs. School District Number Three Fractional of the Townships of Sylvan and Lima, a municipal body corporate. Assumpsit. Washtenaw circuit. Order authorizing adjustment of litigation in regard to bond of School District No. 3, fractional, filed, January 17, 1910 (in the main case,—Commissioner of Banking vs. Chelsea S. B., et al.)

Wm. W. Wedemeyer, Receiver Chelsea Savings Bank, vs. Harold P. Glazier. Henrietta M. Glazier, and Vera G. Glazier. Washtenaw circuit. Three cases.) Cases tried and verdict for defendants, November 8, 1909 (shown by copy of calendar entries received from clerk, in April, 1911).

Sylvester A. Young vs. Henry N. Moore, Salem F. Kennedy, Lars P. Sorenson and Addison D. Kirtland, defendants and appellants. Certiorari to Mecosta circuit. Assumpsit. Plaintiff brought suit against defendants, as directors of the Tabard Office Supply Company, a foreign corporation, by which he sought to recover from them the amount of two promissory notes made by said corporation. The defendants as such directors, had failed to make the annual report for the year 1907. The action was brought under the provisions of Act 232, Public Acts of 1903, as amended by Act 194, Public Acts of 1905. Defendants demurred to the declaration. The demurrer was overruled and defendants brought the case into the Supreme Court by writ of certiorari. Submitted, April 7, 1910. Reversed and demurrer sustained July 14, 1910. 162 Mich. 60.

The Attorney General filed brief, as Amicus Curiae, after the case had been submitted:

"The record and briefs filed in this case raise a question, the decision of which is of such importance to the state, that the interests of the public involved therein are far greater than the mere pecuniary interests of the parties to this suit. The claim made, briefly stated, is that foreign corporations admitted to carry on business in Michigan are not subject to any of the provisions of the statutes of this state providing for the incorporation of companies for the various purposes specified in such statutes and prescribing the powers and fixing the duties and liabilities of such corporations. * * * We submit that it requires a strained construction of the word 'corporation' as used in Section 4 of Act 206 (of 1901), as amended, to limit its reference to the general corporation law (Act 232 of 1903), to include only those duties and liabilities which refer to the corporation in its literal sense as a legal entity and not to its constituent element, and that a fair construction of the language used by the legislature in Section 4, leads to the conclusion that it was intended to adopt the provisions of Act 232, in their entirety, as applying to foreign corporations admitted to do business under that act."

The opinion of the supreme court stated: "It is not to be doubted that the legislature intended, by its amendment to Section 12 of Act No. 232, to impose the same penalties upon directors of foreign corporations, for failure to make the required reports, as are visited upon those of domestic corporations, and it may be that * * * the legislature intended to include in the words 'foreign corporations' not only that impersonal and incorporeal thing, the corporation itself, but likewise its directors and stockholders, but nevertheless, statutes imposing penalties must be strictly construed. * * * It is a simple matter for the legislature, at its next session, by a suitable amendment to Act No. 310 of the Public Acts of 1907, to impose a personal liability upon directors of foreign corporations for failure to file annual reports, if, as is evidently the case, it intends such liability should attach. As its enactments now stand, we are of opinion that no such liability exists."

An amendment was drawn and enacted as Act 206, by the legislature of 1911.

EJECTMENT CASES DISPOSED OF-Circuit Courts.

John M. Longyear vs. Rufus R. Goodell, Frederick W. Nichols, and Oramel B. Fuller, Auditor General. Keweenaw circuit. Ejectment. Judgment, August 23, 1910.

TRESPASS ON THE CASE PROCEEDINGS DISPOSED OF- Circuit Courts.

Joseph S. McDowell, Assignee of Edward Wallerstein & Company, a corporation, vs. Otis Fuller, Warden Michigan Reformatory (formerly State House of Correction and Reformatory) at Ionia. Commenced in Wayne circuit, but in February, 1906, order for change of venue to Jackson circuit, was filed. Tried April 5 to 23. Judgment and verdict for plaintiff entered April 23, 1910. Order staying proceedings for ninety days was entered, the same day, June 9, 1910, plaintiff's costs were taxed at \$135.53, and orders were entered at various times subsequent to the first order to extend the time for settlement of the bill of exceptions.

Wm. W. Wedemeyer, Receiver Chelsea Savings Bank, vs. Timothy Drislane. Washtenaw circuit. Trespass on the case, involving the sum of one thousand dollars. Case tried, and "court found no cause for action," May 4, 1911.

MISCELLANEOUS CASES DISPOSED OF.

In re Claim of the State of Michigan against The Firemens' Insurance Company, of Baltimore, Maryland.

Claim was sent to the receiver, March 17, 1904, for \$979.31.

Credit of payment by Providence Washington Insurance Company, on account of \$7,491.17, of premiums originally written by the Firemen's Ins. Co., prior to Jan. 1, 1904, and included in 1906 statement by the Providence Washington Insurance Company	\$224 74
First dividend was received in November, 1904.....	293 79
Second and third dividends in May, 1906 (\$121.22 and \$23.13).....	144 35
Final dividend in July, 1910.....	1 57

Total amount received	\$664 45
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In re taxes of Detroit, Grand Haven & Milwaukee Railway Company. The attempt by the State, in proceedings lately pending in the supreme court to bring this company under the ad valorem system of taxation the same as other railroads, having proven unavailing, by reason of decision (157 Mich. 144) adverse to the State's claims, measures have been taken to compel it to pay the full rate required under its special charter.

Section 9 of Act 140 of 1855, requires it to pay one per cent upon its capital stock paid in; it is believed that the \$25,171.40 which it has heretofore paid is not one per cent upon its full capital paid in.

On May 21, 1910, upon suggestion of the Attorney General, the Auditor General, basing his computation upon the several reports of this company and other data determined its capital stock paid in to be \$7,000,000, which would produce a tax of \$70,000.

Demand for this amount, less the \$25,171.40 heretofore paid, as the tax due July 1, 1909, was made on May 21, 1910.

And, August 11, 1910, a second demand was made (for the taxes due July 1, 1910).

The amounts claimed have not been paid and proceedings to enforce collection have been instituted. The result, if the State is successful, will be to increase the taxing basis of the railway company about \$45,000.00 per year. The back taxes for a considerable number of years have also been included in the proceedings. (See case in equity, Kent circuit court, disposed of, and appeal pending in supreme court.)

Martin P. Birdsall, appellant, vs. Eldon Smith, Ormond C. Howe and Edward A. Havens. Error to Kent. Case by Martin P. Birdsall against defendants for alleged malicious prosecution, growing out of prosecution upon complaint of defendants, for selling adulterated milk. A judgment for defendants on a verdict directly by the circuit court is reviewed by plaintiff on writ of error. Submitted, on briefs, June 23, and affirmed, October 4, 1909. 158 Mich. 390.

Mary Eggart, plaintiff, vs. Michigan Benevolent Association (principal defendant), John T. Rich, State Treasurer (Garnishee defendant). Alpena circuit. Stipulation to discontinue without costs, signed under date of December 18, 1908.

The Security Trust Company, trustee in bankruptcy of the estate and effects of Frank P. Glazier, bankrupt, complainant, vs. Wm. W. Wedemeyer, receiver of the Chelsea Savings Bank, Frank P. Glazier and Henrietta M. Glazier. District court of the United States for the eastern district of Michigan, in bankruptcy. Decree agreed upon by stipulation, dated October 11, 1909.

Nicholas C. Hartingh vs. Oramel B. Fuller, Auditor General. Iosco circuit. Application for certiorari to review the action of the Auditor General in issuing a certificate of error against a certain tax deed to said petitioner for the south half of the southwest quarter of section two, town twenty-three north, range five east, in Iosco county, Michigan, for the taxes of 1906.

The Attorney General, on behalf of the Auditor General, filed a motion to quash the writ of certiorari, for the following reasons:

1st. That the circuit court for the county of Iosco has no jurisdiction under the constitution and laws of this state to review by certiorari the action of Oramel B. Fuller, Auditor General of the state of Michigan, in issuing said certificate of error;

2nd. That the said Oramel B. Fuller, as Auditor General of the state of Michigan, is a state officer, acting under special authority conferred upon him by Act 206 of the Public Acts of 1893, as amended, in the issuance of said certificate of error and his action therein is not subject to review by the circuit court for the county of Iosco under the authority conferred upon it by the constitution of this state;

3rd. That said writ is not necessary to carry into effect any order, judgment or decree of the circuit court for the county of Iosco;

4th. That said Auditor General is not an inferior court or tribunal to the cir-

circuit court for the county of Iosco within the jurisdiction of the circuit court for the county of Iosco;

5th. That the circuit court for the county of Iosco has no jurisdiction to issue said writ of certiorari under any rule prescribed by the supreme court.

Discontinuance filed, dated June 17, 1911.

In re coroner's inquest over the dead body of Alsa Woodward, killed in the Grand Trunk Railroad wreck two miles east of Durand on the night of August 24, 1910.

Inquisition held at the village of Durand, in the township of Vernon, Shiawassee county, Michigan before Samuel T. Patchel, justice of the peace, commencing August 31, testimony taken all day and adjourned to September 7. Further testimony taken September 7th and 8th, when testimony was closed. Forty-six witnesses were sworn. Verdict rendered September 9, 1910, which in substance was, to-wit:

That the brakeman, George M. Graham of train No. 14, was guilty of gross negligence for not performing his duty as flagman in placing the proper safeguards around train No. 14, namely going back a proper distance with lights, placing proper number of torpedoes as required by rules.

Further that Charles E. Spencer, engineer on train No. 4 which ran into train No. 14 was blamed for not watching the track in front of his train as he should in running from Durand to the place of the collision.

In re petition of Wm. B. Hanna for the removal from office of Fred Store, a justice of the peace, for the township of Greenland, in the county of Ontonagon. The Attorney General personally investigated this matter, July 27, 1910. Mr. Hanna agreed to withdraw his petition if Mr. Store would discontinue taking civil and criminal business for the remainder of his term and pay to the county all moneys due, etc., this proposition was agreed to by the prosecuting attorney, judge of probate and county clerk. Report, recommending no further action, was made to the Governor, August 3, 1910.

In re charges against State Senator Wm. H. Bradley, made by Sherman M. Townsend. By request of the Lieutenant Governor, the Attorney General was represented at the hearings. The Senate committee report was submitted, February 28, 1911, and adopted. A motion to declare the seat of Senator Bradley vacant, was lost. (Senate journal, pages 343, et seq.)

In re Investigation of the Michigan Asylum for the Insane, at Kalamazoo, by the legislative committee. The "proposed report" drafted by Assistant Attorney General Lawler was not adopted by the committee. (See report of committee in House journal, April 18, 1911, page 1703.)

In re deportation of Aliens who have been in the United States less than three years. A blank was published by the Attorney General, at the suggestion of the inspector-in-charge, United States Immigration Bureau, Detroit, Michigan. Copies of this blank, with instructions and the sections of the U. S. statutes, governing deportation of aliens, printed thereon were mailed to all superintendents of the poor, judges of probate and the heads of all State institutions. (See in Opinion Schedule under date of November 1, 1910, for copy of letter, blank, instructions, etc.)

In re requisitions for the return of paroled prisoners. A letter was written to Senator William Alden Smith, suggesting that a bill be introduced to amend the United States statute by providing for the direct rendition of paroled prisoners upon the warrant of wardens and superintendents of prisons from which paroled.

March 3, 1911.

Hon. William Alden Smith, United States Senator, Washington, D. C.

My Dear Senator—We have experienced considerable trouble in the past in securing the return to this state of prisoners released upon parole from our prisons and who violate the conditions of parole. A very great number of the states now have a law similar to that in force in Michigan with reference to the parole of prisoners. Some of the states have refused to honor requisitions from this state for the return of paroled prisoners. It occurred to me that the federal statute relative to the rendition of fugitives from justice should be amended by making the same applicable to prisoners released upon parole and who violated the conditions of parole and whose parole has been revoked by the proper state authority. I think the amendment should provide for the rendition of such paroled prisoners upon the warrant of the warden or superintendent of the prison.

May I ask that you bear this matter in mind and have prepared and introduced as soon as possible a bill amending the statute in the manner indicated. Your early attention to the matter will be sincerely appreciated.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

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ASSUMPSIT CASES PENDING-Circuit Courts.

The People of the State of Michigan vs. Frank P. Glazier and the Title Guaranty & Surety Company. Ingham circuit. The prosecution of this suit was enjoined by the Ingham circuit court, in chancery at the suit of the Title Guaranty & Surety Company, upon a bill filed for accounting and discovery and to determine the liability of the various sureties upon the official bonds given by Defendant Glazier as State Treasurer.

(See Title, G. & S. Co. vs. State of Mich., et al.)

State Board of Health vs. Board of Supervisors of Genesee County. Genesee circuit.

EJECTMENT CASES PENDING-Circuit Courts.

Charles B. Williams vs. Auditor General, et al., and Gilbert Olson, et al. Alpena circuit court.

Henry Platz, Administrator, Estate of Fred Lincoln, deceased vs. Auditor General, et al., and Albert C. Beutel, et al. Alpena circuit court.

PETITION TO VACATE PLAT, PENDING-Circuit Court.

In re petition of Ellen M. Holmes, to vacate certain plats. Wayne circuit, No. 52,825.

TRESPASS ON THE CASE PROCEEDINGS PENDING-Supreme Court.

Joseph S. McDowell, Assignee of Edward Wallerstein & Company, a corporation, vs. Otis Fuller, Warden Michigan Reformatory (formerly State House of Correction, etc.), Ionia. Error to Jackson circuit. Trespass on the case.

TROVER SUIT PENDING-Circuit Court.

Consolidated Coal Company, a corporation, vs. Board of Trustees of the Michigan Employment Institution for the Blind, Saginaw circuit. Trover suit.

MISCELLANEOUS CASES PENDING.

In re Claim against The City Savings Bank of Detroit, Michigan. Claim for State funds on deposit when the bank became insolvent:

Amount of deposits	\$75,000 00
Interest to verdict (In the case of McCoy, as State Treasurer v. Pingree, et al.)	\$4,907 92
Interest to date of judgment.....	312 72
Judgment was entered in May, 1903, for \$80,220.64.	

Amounts paid:

Pingree Div. No. 1, 2½ per cent as of June 24, 1903, received Sept. 23, 1903.....	1,978 99
Union Trust Co., receiver, Div. No. 1, 12½ per cent received Nov. 9, 1903.....	9,375 00
Pingree Div. No. 2, 2/789-1000 per cent received, Nov. 21, 1903	2,208 01
Union Trust Co., receiver, Div. No. 2, 20 per cent received, July 30, 1904	15,013 54
Union Trust Co., receiver, being 12½ per cent on \$67.71, as of Nov. 10, 1903, received Jan. 31, 1905.....	8 46
Union Trust Co., receiver, Div. No. 3, 6 per cent, received May 31, 1905	4,504 06
Union Trust Co., receiver, Div. No. 4, received, May 25, 1906	9,383 46
F. S. Osborne, bankrupt, first and final dividend, received from H. P. Davock, referee in bankruptcy, Dec. 31, 1906....	194 48
Union Trust Co., receiver, Div. No. 5, received, June 10, 1908	5,254 74
Homer McGraw, bankrupt, first and final dividend, received, Dec. 31, 1908.....	3,222 90
Union Trust Co., receiver, dividend, received during fiscal year, 1910	4,525 78

Total amount paid on claim..... \$55,669 42

The 1911 report of the State Treasurer does not show that anything has been received during the fiscal year ending June 30, 1911.

In re Claim against Chelsea Savings Bank, et al., for amount on deposit when the bank became insolvent: \$685,587.79.

Amounts paid:

March 12, 1908, by American Surety Co.....	\$50,000 00
May 6, 1908, Receiver's Div. No. 1.....	205,745 34
Oct. 21, 1908, Receiver's Div. No. 2.....	70,879 77
April 2, 1909, Receiver's Div. No. 3.....	46,487 18
Feb. 2, 1910, U. S. Fidelity & Guaranty Co., Baltimore, Md. (Full payment under depository bond).....	25,000 00
Feb. 3, 1910, Bankers' Surety Co., Cleveland, O. (Full pay- ment under depository bond).....	17,500 00
Feb. 8, 1910, Title Guaranty & Surety Co., Scranton, Pa. (Full payment under depository bond).....	25,000 00
Feb. 10, 1910, Federal Union Surety Co., Indianapolis, Ind. (Part payment under depository bond).....	10,000 00
Mar. 29, 1910, Receiver's Div. No. 4.....	42,068 26
April 4, 1910, Federal Union Surety Co., Indianapolis, Ind. (Part payment under depository bond).....	5,000 00
June 4, 1910, Federal Union Surety Co., Indianapolis, Ind. (Part payment under depository bond).....	5,000 00
July 1, 1910, to June 30, 1911, balance of bond of Federal Union Surety Co.....	37,500 00
Total amount paid, 1908 to 1911.....	\$540,180 55
Total amount paid in fiscal year 1911.....	37,500 00

The 1911 report of the State Treasurer shows the present condition of this account, as follows:

At the close of the fiscal year 1910 there was due the State from the Chelsea Savings Bank, the sum of \$182,907.24, which has now been reduced to \$145,407.24 by the payment, during the year of \$37,500.00 by the Federal Union Surety Company of Indianapolis, Ind., the amount paid by them being the balance due under their depository bond.

The balance of \$145,407.24 which is still due the State is secured by depository bond of \$25,000.00 of the Metropolitan Surety Co., of New York (in hands of receiver); by official bond of \$150,000.00 given by former State Treasurer Frank P. Glazier with the Title Guarantee & Surety Co., of Scranton, Pa., as surety; and by the State's equity in the remaining assets in control of the receiver of the bank.

In re Frank P. Glazier, Bankrupt. Proof of claim of the State of Michigan for the amount of the deposit in the Chelsea Savings Bank, was forwarded to the referee in bankruptcy, United States circuit court, eastern district of Michigan, southern division, in equity, October 6, 1908.

This bankruptcy case is still pending, with the Security Trust Company, as trustee.

(See statement In re Chelsea Savings Bank for amounts received during fiscal year, 1911.)

In re Claim against The Metropolitan Surety Co., on account of \$25,000.00 bond (In re Chelsea Savings Bank). This corporation having been

dissolved, and a receiver appointed by the supreme court of the county of Albany, New York, proof of claim of the State of Michigan was forwarded to the receiver, John F. Yawger, New York City, April 3, 1909.

Notice of rejection of claim and of motion to appoint referee, received in July, 1909, and on April 26, 1910, the claim was submitted before the referee in New York and liquidated at \$21,000.00, at which amount it was allowed and the State of Michigan will receive dividend on this amount.

SCHEDULE "I."

Statement of amounts recovered as reimbursements for "costs of suits."

In re Emma Reidy, deceased, (Escheated estate), John Dudeck, claimant, vs. John A. Watson, Adm., contestant, costs taxed against John Dudeck, claimant, in the supreme court, recovered Sept. 17, 1910. (See schedule "E," for statement of further particulars In re Reidy estate)	\$125 81
Mary McDonald vs. Archie T. Miller and James B. Bradley, Auditor General, recovered October 14, 1910, (Chancery appeal, Schedule "D")	51 75
The People of the State of Michigan, by John E. Bird, Attorney General vs. Grand Rapids Muskegon Power Co., recovered from Mecost county, as payment of the county's share of the costs in this case, after judgment in favor of respondent (see quo warranto cases, Schedule "C" for statement of the case)	79 87
Hattie Whitney et al. vs. Isaac Bloem, Deputy Factory Inspector, et al., supreme court, recovered May 2, 1911, (see chancery cases, Schedule "D")	102 15
Citizens' Telephone Company of Battle Creek, Citizens' Telephone Company of Marshall, Michigan State Telephone Company, Twin City Telephone Company, and Union Telephone Company vs. Oramel B. Fuller, Auditor General, circuit court of the U. S., cases in equity, (see cases in equity, Schedule "D") (an additional amount will appear in 1912 report), recovered in June, 1911	724 16
Total	\$1,083 74

SCHEDULE "J."

List of insurance companies whose articles of association, amendments to articles of association, etc., have been approved and statement of the approval fees received and paid to State Treasurer.
Total amount \$140.00.

Finnish Mutual Fire Insurance Company, of Calumet, Michigan. Amendments to articles of association, approved, July 5, 1910, fee	\$5 00
Locomotive Engineers' Mutual Protective Association. Articles of association, July 20, 1910, fee	5 00
Detroit Life Insurance Company. Articles of association, approved, October 10, 1910, fee	5 00
National Casualty Company. Amendments to articles of association, November 23, 1910, fee	5 00
The Farmers' Mutual Fire Insurance Company, of Calhoun county. Amendment to charter, approved, December 6, 1910, fee	5 00
United States' Hospital Company. Articles of association, approved, December 6, 1910, fee	5 00
The Kosciuszko Mutual Fire Insurance Company, of Bay, Saginaw and Huron counties, charter approved, December 15, 1910, fee	5 00
Preferred Casualty Company of Saginaw, Michigan. Amendment to articles of association (changing home office to Detroit) approved, December 29, 1910, fee	5 00
Patrons' Mutual Fire Insurance Company, of Ingham county. Charter, as amended, approved, December 30, 1910, fee	5 00
Genesee County Farmers' Mutual Fire Insurance Company. Amendments to articles of association, approved January 4, 1911, fee	5 00
Michigan Mutual Tornado, Cyclone and Windstorm Insurance Company. Amendments to charter, approved, January 19, 1911, fee	5 00
Calumet Mutual Fire Insurance Company. Amendments to charter, approved, January 23, 1911, fee	5 00

Farmers' Mutual Fire Insurance Company, of Saginaw county. Amendment to charter, approved, January 25, 1911, fee	\$5 00
Michigan Millers' Mutual Fire Insurance Company, of Lansing. Resolution to extend corporate existence, approved, January 26, 1911, fee	5 00
Farmers' Mutual Lightning Protected Fire Insurance Company, of Michigan. Amendments to articles of association, approved, February 14, 1911, fee	5 00
Mutual Casualty Company, of Grand Rapids, Michigan. Amendment to articles of association, approved, January 31, 1911, fee	5 00
Citizens' Mutual Fire Insurance Company, of Kent, Allegan and Ottawa counties. Amendment to charter, approved, February 2, 1911, fee	5 00
Peoples' Mutual Fire Insurance Company, of Ionia, Montcalm and Clinton counties. Amendment to charter, approved, February 2, 1911, fee	5 00
Farmers' Mutual Fire Insurance Company, of Huron county, Michigan. Amendments to charter, approved, February 6, 1911, fee	5 00
United States' Health and Accident Insurance Company, of Saginaw, Michigan. Amendment to articles of incorporation, approved, February 6, 1911, fee	5 00
Grange Mutual Fire Insurance Company, Limited, of St. Clair and Macomb counties. Amended articles of association, approved, March 3, 1911, fee	5 00
Grangers' Mutual Insurance Company, of Newaygo, Muskegon and Oceana counties. Amendments to articles of association, approved, March 18, 1911, fee	5 00
Detroit National Fire Insurance Company. Articles of association, approved, March 21, 1911, fee	5 00
Peninsular Life Insurance Company, of Michigan. Articles of association, approved, March 23, 1911, fee	5 00
Farmers' Mutual Fire Insurance Company, of Allegan and Ottawa counties. Amendment to charter, approved, April 7, 1911, fee	5 00
The Farmers' Mutual Fire Insurance Company, of Calhoun county. Revision of charter, approved, April 27, 1911, fee....	5 00

Mutual Fire Insurance Society of the Michigan Conference of the Evangelical Association, Limited. Articles of association (Constitution), amendment, approved, June 19, 1911, fee.... \$5 00

Michigan Farmers' Mutual Fire Insurance Company, of St. Clair and Sanilac counties. Amendments to charter, approved, June 28, 1911, fee 5 00

"Revised" Articles of association, returned by attorney general, without approval.

Patrons' Mutual Fire Insurance Company, of Michigan, Limited, and Patrons' Mutual Tornado, Cyclone and Windstorm Insurance Company, of Michigan. Revised articles of association of both of these companies were submitted to the Attorney General, December 30, 1910, but were returned to the secretary, without approval, February 2, 1911. (See mandamus case of Patrons' Mutual Fire Insurance Company vs. Attorney General).

SCHEDULE "K."

Summary-Statement covering, approximately, all amounts collected and paid to the State of Michigan, through the attorney general, during the fiscal year ending June 30, 1911.

Telephone and telegraph taxes and interest, (Sch. "D.")..	\$312,271 57
Escheated estates (Sch. "E.")	3,449 75
Inheritance taxes and interest, (Sch. "F.")	3,087 92
Insane, reimbursement for support, (Sch. "G.")	20,008 66
Firemens' Insurance Co., of Baltimore, (Sch. "H.")	1 57
Chelsea Savings Bank, "On account" (Sch. "H.")	37,500 00
Costs of suits, recovered, (Sch. "I.")	1,083 74
Insurance approval fees, (Sch. "J.")	140 00
Total.....	\$377,543 21

SCHEDULE "L."

Official opinions of the attorney general.

PRIMARY ELECTION LAW. ADVERTISEMENT. Pamphlet may be issued containing more than one sheet of paper if it complies with size required by statute.

Newspapers containing data pertaining to candidate may be sent to persons other than regular subscribers.

July 7, 1910.

Mr. James T. Fisher, Calumet, Michigan:

My Dear Sir—I have your communication of July 5th in which you submit two inquiries under the Primary Election Law. You ask:

First. Whether a pamphlet may be sent out containing more than one sheet of paper, provided it complies with the statute as to size.

Second. Whether a club may secure the mailing of additional copies of a newspaper by a newspaper printing stuff favorable to Mr. Kerr to the voters not on their regular subscription list, and if not, could copies of this paper be mailed by the club at its own expense.-

In reply thereto would say there is nothing in the Primary Election Law which prohibits sending out pamphlets containing more than one sheet of paper provided that the sheets are not larger than two and one-fourth inches in width by four inches in length and they do not contain a lithograph, half-tone or engraving larger than one and one-half inches in width by two inches in height.

In answer to the second inquiry would say that my attention has not been called to any provision of the Primary Election Law which would prohibit the mailing of additional copies of a newspaper to voters not on the regular subscription list of such newspaper.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

SCHOOL LAW. RESIDENT. Residence of children is the residence of the father. School district not required to pay tuition of non-resident.

July 7, 1910.

Dr. Albert Yates, Washington, Michigan:

Dear Sir—I have your communication of July 5th in which you state that a certain person lived to the age of manhood in Michigan and then went to South America where he married a native and had children born; that he has been only once or twice in Michigan, and since going to South America has never lived in your school district;

that some few years ago he sent two of his children to be educated in Macomb county and supported them at the home of his cousin whose residence is in your school district. You ask:

First. Is the father a legal resident of your school district;

Second. Are the two children who are being educated in Macomb county residents of your school district, and is the district liable to pay their tuition under Act No. 65 of the Public Acts of 1909.

In reply to the first inquiry would say the father is not a legal resident of your school district.

In reply to the second inquiry would say Act 65 of the Public Acts of 1909 confers upon the board of education the authority to pay the tuition only of children who are residents of the district. The two children in question are not residents of the school district in question. The fact that are being educated in your school district, or that they are actually living in the district does not constitute them residents of the district. The residence of the child in this case is the residence of the father and the father's residence is not in your school district. It is therefore my opinion that your school district could not legally pay the tuition of the children in question to one of the three nearest high schools.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

JUVENILE COURT LAW. JUDGE OF PROBATE. The Probate Judge has no right to require juvenile delinquents to pay into Court sufficient money to make good damages or pay into court the value of stolen property as a condition of probation but may require payment to owner for property damaged or require the restoration to owner of the value of property stolen, as a proper condition of probation.

July 7, 1910.

Hon. Robert A. Smith, Judge of Probate, Jackson, Michigan:

Dear Sir—I am in receipt of your letter of June 25, inquiring as to your right, under Section 5 of the Juvenile Court Law, Act 6, Extra Session, 1907, to require a child to pay in court a sufficient sum to make good the damages, in the case of malicious trespass, or to pay into court the value of stolen property not restored, as a condition of probation.

You also ask whether or not the moneys received from the child should be retained by the court or turned over to the parties injured.

In reply will say that we do not think you have authority to require any money to be paid in court to be retained by the court. This is clear from the decision in Robinson vs. Wayne Circuit Judges, 151 Mich., page 315, for this course would amount to the imposition of a fine. We see, no reason, however, why you would not require the child, as a condition of probation, to pay to the owner of the property injured the damages, in the case of trespass, or restore the value of the property taken, in the case of larceny. Both of these, it seems to me,

may be justified as matters of proper discipline, and would not subject the Act to the criticism made by the Court in Robinson vs. Wayne Circuit Judges.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-f-o.

WOMEN. RIGHT TO VOTE. If a woman possesses the statutory qualifications and has property assessed for taxes she is entitled to vote although her name may not appear upon the tax roll.

A person who owns property which has not been assessed for taxes is not thereby entitled to vote.

A woman who owns stock in a Michigan corporation is not thereby entitled to vote unless she is personally assessed upon stock.

A woman who owns bonds exempt from taxation or jewelry which has never been taxed is not thereby entitled to vote.

July 7, 1910.

Hon. Wellington R. Burt, Saginaw, Michigan:

My Dear Sir—Your communication of July 2d relative to the right of women to vote, has been duly considered. The inquiries which you submit are as follows:

First. Is it necessary for her name to appear on the tax roll? If not, what way is the election board to ascertain whether or not she is a taxpayer?

Second. Has a woman a right to vote who has property that could be taxed but which has never been assessed, or does not appear on the tax roll?

Third. Is a woman entitled to vote because she owns stock in a Michigan corporation? Said corporation paying its own tax.

Fourth. Is a woman entitled to vote who owns bonds which are exempt from taxation, and her name never having appeared on the tax roll?

Fifth. Is a woman entitled to vote who owns a large amount of valuable jewelry which never has appeared on the tax roll?

Sixth. Should a woman's vote be accepted even if she swears she has property but it has never been assessed or taxes paid on said property?

In reply to the inquiries in the order set forth, would say:

First. That in accordance with the provisions of Act No. 206 of the Public Acts of 1909, it would seem that if a woman possesses the other statutory qualifications and has property assessed for taxes, she would be entitled to vote even though her name does not appear upon the tax roll. The election board can ascertain whether she is a taxpayer either by requiring her to exhibit a deed or contract of the property, or other proof of ownership.

Second. The statute above referred to confers upon women the right to vote who possess "the qualifications of male electors and has property assessed for taxes," etc. It will be observed that one of the material qualifications is that a woman must possess property which is assessed

for taxes. A woman who possesses property but which has not been assessed for taxes, is not thereby entitled to vote.

Third. A woman who owns stock in a Michigan corporation can not be said to have property assessed for taxes unless she is personally taxed upon the stock. A woman would not necessarily be qualified to vote unless she is actually assessed for such stock.

Fourth. A woman who owns bonds which are exempt from taxation does not possess property assessed for taxes, and is not thereby entitled to vote.

Fifth. A woman who owns jewelry which has never appeared upon the tax roll is not by virtue of such ownership entitled to vote.

Sixth. It is somewhat difficult to answer your sixth inquiry. In the absence of anything to the contrary it is assumed that the provisions of the General Election Law would be held applicable unless the contrary is expressed either in the Constitution or the statute. Under the General Election Law the oath is the conclusive evidence on which the inspectors are to act and they are not at liberty to refuse to administer it or to refuse the vote after oath has been taken.

Wolcott v. Holcomb, 97 Mich. 361;

People v. Cicott, 16 Mich. 302.

If the same rule can be held applicable where the right of a woman to vote is questioned, it would seem that if she takes oath to the effect that she owns property and it is assessed for taxes, the election board would have no authority to exercise any discretion but to allow her to vote. If, however, she simply makes oath that she possesses property, but does not swear that it is assessed for taxes, the board should refuse to permit her to vote.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

DENTISTRY. A person licensed to practice dentistry in this State is entitled to use the prefix "Dr." before his name.

July 16, 1910.

Dr. A. W. Haidle, Secretary State Board of Dental Examiners, Negaunee, Michigan:

Dear Sir—I am in receipt of yours of the 13th inst., with reference to Fred E. Bush and Curtis E. Bush, whom you say are both legally licensed to practice dentistry in this State, and containing the inquiry whether or not the Michigan State Board of Dental Examiners has authority to compel Curtis E. Bush to stop using the prefix "Doctor" before his name.

As I understand it, any person who has been regularly licensed to practice dentistry in this State is entitled to use the prefix "Doctor" before his name, and it is my opinion that the controversy between these two men is something in which the Board itself is not at all interested, and has no authority to compel either one to cease using the prefix

“Doctor.” As I suggest, it is a matter entirely between themselves. If one is encroaching upon the rights of the other, it may be that he might have some redress in a court of chancery, but that would be something regarding which I am not called upon to advise, nor anything in which the Board is interested.

Yours very truly,
FRANZ C. KUHN,
Attorney General.

Ku-f-o.

SUPREME COURT REPORTS. JUDGES OF THE SUPREME COURT. Supreme Court Reports delivered to Justices of the Supreme Court are State property and upon the resignation of a Justice should be delivered over to his successor.

August 3, 1910.

The Board of State Auditors, Lansing, Michigan :

Gentlemen—I am in receipt of your letter in which you submit the inquiry as to whether a retiring justice of the Supreme Court is entitled to the volumes of the Supreme Court Reports delivered to him during his incumbency.

Section 1570 of the Compiled Laws of 1897 provides as follows:

“That when each volume is published and delivered the State librarian shall deliver one copy each out of said three hundred and fifty volumes to the office of the Governor, the Secretary of State, the Auditor General, the State Treasurer, the Commissioner of the State Land Office, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Railroads, and the Commissioner of Insurance, one copy to each of the justices of the Supreme Court, one copy to each of the circuit court and superior court and recorder's court judges of this State, one copy to the probate court of every county, one copy to be kept in the office of the State reporter, one copy to each of the United States district court judges in Michigan, one copy to be kept in the office of the county clerk of each county in this State, one copy to the library of the University of Michigan, one copy to the Agricultural College, and one copy to the library of each of the states and territories, which shall contribute to the library of this State the law reports which shall be published under the authority of such state or territory.”

Section 9843 Compiled Laws provides as follows:

“Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office, and every person violating this provision shall be deemed guilty of a misdemeanor.”

The question to be determined is whether the reports referred to in section 1570 are books “in his custody as such officer, or in any way appertaining to his office.”

The answer to this proposition would be apparent, were it not for the fact that section 1570 provides for the delivery of the reports to certain

offices. For example, the office of the Governor; while in the case under discussion, the delivery is to be made to "each of the justices, etc." However, notwithstanding this difference in language, I am impressed that the reports distributed to the justices were intended to become a part of the official library of the justice and not his personal property. The provision for delivery to the justices and to the judges of the circuit courts serve only to make it clear that each member of the court, regardless of the number of members, should receive a copy. Any other construction would result in the justice having the use of only such volumes as were delivered during his incumbency, without any provision for supplying the deficiency. It is evident that the reports so delivered would be practically valueless as a working library and if the sets were filled out when a new justice or circuit judge was installed, the complete sets on hand for distribution would have been exhausted years ago.

I am of the opinion, therefore, that the Supreme Court Reports delivered to justices, etc., are State property, belonging to the office rather than to the officer, and that upon the resignation of a justice, they should be delivered over to his successor, as provided by section 1570 Compiled Laws of 1897 as "books in his custody as such officer."

Yours very respectfully,

FRANZ C. KUHN,
Attorney General.

Hi-f-o.

PRIMARY ELECTION LAW. DISTRICT. BOARD OF ELECTION COMMISSIONERS. POLITICAL PARTIES. CANDIDATES. In congressional, senatorial or representative districts all political parties governed by primary election law.

In counties if any one political party adopts the general primary election law all parties governed thereby.

It is the duty of the board of election commissioners to furnish ballots for a political party regardless of whether there are any nomination petitions filed.

It is the duty of all political parties to select candidates in accordance with the general primary election act where it is applicable. If candidate cannot procure the necessary two per cent of the enrolled voters in a county such name cannot be printed on official primary election ballot.

August 10, 1910.

Hon. Ray E. Hart, County Clerk, Marshall, Michigan:

Dear Sir—I have your communication of August 4th in which you submit a number of inquiries arising under the General Primary Election Law. You ask:

"First. Under the Primary Election Law, in districts where one party has heretofore nominated county officers under the primary law, do not all of the political parties nominate all of their candidates for said offices in the same manner?"

Your inquiry relates solely to districts. Section 17 of the General Primary Election Act makes it the duty of every political party in

congressional, senatorial or representative districts to select candidates under the Primary Election Law. If however, the inquiry relates to counties you are respectfully referred to section 44 of the Primary Election Act, which makes it the duty of all political parties to select candidates for county offices by the direct voting system in those counties in which any one political party has adopted the direct-voting system.

"Second. If all political parties are required to so nominate and in case one political party fails to file petitions, is the Board of Election Commissioners required to furnish any ballots for said party in case no petition is filed?"

The only purposes in requiring petitions to be filed is to afford candidates an opportunity to have their names placed upon the official primary election ballot. The fact that there are no nomination petitions filed does not relieve the board of election commissioners of the duty of furnishing ballots for the use of the enrolled voters of a particular political party. The enrolled voters of a political party are entitled to exercise their right to vote for candidates at the September primary election, regardless of whether any candidates have filed nomination petitions.

"Third. In case one political party files only one or two petitions for separate offices, has not the Board of Election Commissioners got to furnish a complete ticket for all of the officers to be nominated, printing the names of those filing petitions for said ticket, so that the voters may insert such names for the other officers if they so desire?"

It is the duty of the board of election commissioners in such case to print upon the official primary election ballot the names of those candidates who have filed the necessary nomination petitions. The ballots, however, should be so prepared so that the voters may vote for candidates in those instances in which nomination petitions are not filed.

"Fourth. In case any political party should refuse to nominate their candidate under the primary election law, and under the old convention system, placing in nomination different candidates and certifying the same to the Board of Election Commissioners to refuse to furnish ballots for said political party?"

This inquiry is not understood. It is the duty of every political party to select candidates in accordance with the primary election system wherever the primary election act is applicable. The answer to your third inquiry is probably an answer to this question.

"Fifth. In one county in this State (Chippewa) in 1908, there was about 2,400 votes cast in the Democratic party for the office of Secretary of State. I am informed that the present Democratic enrollment in Chippewa county does not exceed 25. You will readily see that 2% would be 47, and now the question arises shall the board of election commissioners furnish ballots for the Democratic party when no candidate can file a petition containing 2% of the number of votes cast at the last preceding November election based upon the office of Secretary of State?"

If it is impossible to secure the necessary two per cent of the enrolled voters upon a nomination petition ballots should be prepared by the board of election commissioners so that the voters may vote for candidates at the September primary. Since the necessary two per cent can-

not be procured owing to the fact that there are not a sufficient number of enrolled voters in the county, it will be impossible for any candidate to have his name printed upon the official primary election ballot.

"Sixth. The latter part of section 36 requires that the said board shall certify to each delegate elected to the county convention and other certifications, etc., and I ask this question: In a city where a ward is divided into two or three precincts being conducted separately, and voting on perhaps the same identical names, who is to certify to the delegate in compliance with this section that he has been duly elected. Each precinct makes their general return to the city recorder or city clerk, and he to the county clerk, and you can see from the above that a certain number of names might be carried in one precinct and another set of names carried in the second precinct and still another set of names in the third precinct, yet the ward as a whole, is entitled to so many delegates. I can readily see that the number of names that the ward is entitled to who receives the highest number of votes of the entire ward would be the delegates to the convention, but who is to canvass the return of the different precincts and notify the delegates. Would that duty come within the power of the canvassing board?"

In reply to the foregoing I am enclosing copy of an opinion rendered to *J. H. Shults of Manistee, Michigan, under date of July 23rd, which it is believed answers your inquiry.

Trusting the foregoing sufficiently advises you, I remain,

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o-encl.

July 23, 1910.

*Mr. J. H. Shults, Manistee, Michigan. Dear Sir: I have your communication of July 20th, in which you submit a number of inquiries under the General Primary Election Law. You ask—

1st. Whether delegates to the county convention should be selected by wards or precincts.

* * * * *

In reply to the inquiries in the order above set forth, would say there is nothing in the General Primary Election Act which recognizes any division smaller than a ward. The answer to the inquiry depends largely upon the call for the county convention. If the officer requires delegates in wards in which there is more than one precinct to be selected by precincts rather than by the entire ward, no question will arise. I understand that there is no objection to this plan if the county committee wishes to follow it. If, however, the call for delegates is made by wards, it will be quite impossible to carry out all the provisions of section 36 of the General Primary Election Act in certifying to the delegates elected. This section provides, in part, that—

"The required number of electors who received the highest number of votes for delegates to the county convention of any political party shall be declared by the board of primary election inspectors to be elected. Said board shall certify to the county clerk the names of the electors so elected as delegates, naming the political party upon whose ballots such electors were elected. Said board shall also certify to each delegate so elected, his election as such delegate. The county clerk shall certify to the chairman of the county committee of each political party of the county the delegates elected by each political party as delegates to the county convention."

If therefore delegates are elected by wards rather than by precincts, it would seem that the last provision in the above quoted section would confer upon the

county clerk the authority to determine from the returns certified to him by the various boards of primary election inspectors who are the elected delegates from a particular ward. In such case it is the duty of the county clerk to certify such statement to the chairman of the county committee of each political party. In case this is done it becomes impossible for the board of primary election inspectors in wards containing two precincts to comply with the law relative to certifying to each delegate his election.

* * * * *

Trusting the foregoing sufficiently advises you, I remain very respectfully,
Henry E. Chase, Deputy Attorney General.
L-k-o.

PRIMARY ELECTION LAW. COUNTY COMMITTEE. County committee can select candidate only in the instances referred to in the statute, or where there is a failure to select a candidate at the primary election.

August 10, 1910.

Mr. Geo. W. Watkins, Three Rivers, Michigan:

Dear Sir—I have your communication of August 8th. You ask whether the county committee of a political party would have authority to appoint a candidate on the county ticket in case there is no candidate on the primary ticket.

In reply thereto would say your attention is challenged to Section 41 of Act 281 of the Public Acts of 1909—the General Primary Election Act—which provides in part:

“That when any candidate shall die or shall withdraw as such candidate before the printing of the ballots after having been nominated as herein provided, or if there shall be a vacancy from any cause whatever * * * the proper board of election commissioners shall cause to be printed or placed upon such ballot * * * the name of the candidate which shall be selected by the proper party committee as shown by the certificate of its chairman and secretary in the manner provided for in the General Election Law.

In accordance with the foregoing, if a candidate is not selected at the primary election the proper county committee can select a candidate in the manner above provided. This, however, must not be construed to mean that if there are no nomination petitions filed for a certain office that such fact in itself would authorize the county committee to appoint the candidate. There must be a failure to select a candidate at the primary election in order to entitle the proper committee to exercise this right.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.

MICHIGAN RAILROAD COMMISSION. Under Act 106 Public Acts of 1909 the commission has authority to fix a schedule of the maximum rates for electric light and power companies rather than a single maximum rate.

August 10, 1910.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—I am in receipt of your communication of July 26th wherein you submit for an opinion the question whether or not the Michigan Railroad Commission has authority under the provisions of Act 106, Public Acts of 1909 to fix a schedule of maximum rates to be charged by an electric light and power company for electric light and power furnished, rather than a single maximum rate, when the matter is properly presented to the commission upon the complaint of a city or village council or township board.

For answer thereto would say that Section 7 of said act provides in part that upon complaint in writing by any city, village or township by its duly constituted common or village council or township board relative to the price of electricity sold or delivered in such municipality, the commission shall investigate such complaint and that after investigation and hearing,—

“The commission within lawful limits may by order fix the maximum price of electricity to be charged by such corporation, and the price so fixed, of which such corporation shall have notice, shall be the maximum price in such municipality until the commission shall upon like complaint or upon the complaint of the person, firm or corporation engaged in furnishing such electricity, again fix the maximum price to be charged therefor.”

The same section further provides:

“In determining such maximum price, the commission shall consider and give due weight to all lawful elements proper to be considered to enable it to determine the just and reasonable price to be fixed for supplying electricity in such municipality, including cost, reasonable return on actual value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month: Provided, however, That the commission shall in no case have power to change or alter the price for electricity fixed in or regulated by or under any franchise heretofore or hereafter granted by any city, village or township: Provided further, That the maximum rate so fixed shall not limit the right of such person, firm or corporation to supply electricity for a less rate if it charges all customers at the same rate for electricity simultaneously used under like conditions. No corporation or person engaged in the business of supplying electricity shall be entitled to have, receive, or recover a greater charge for electricity supplied to any consumer than that fixed by the commission after the same has been fixed as provided herein. The provisions of the act governing hearings before said commission as to rates for transportation of freight by railroads shall so far as applicable govern the hearings before said commission herein provided for.”

I am of opinion that under the provisions of the act the commission not only has power to fix a single maximum rate but also has power to fix a schedule of maximum rates. The statute, while providing that the commission may fix "the maximum price of electricity" also provides that certain things shall be taken into consideration by the commission in determining the maximum price, including cost, reasonable return on actual value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month. This and other provisions of the statute indicate an intention to authorize the commission to divide customers into classes and to regulate and fix the maximum price for the several classes of customers. If it is held that the commission may fix but a single maximum rate, the result would be to practically nullify the statute and to give the commission no useful power in connection with the regulation of the charges for supplying electricity.

Without discussing the matter in detail, it is sufficient to say that from my examination of the statute, I am convinced that it was the intention of the Legislature to confer upon the commission power to classify customers and to fix a schedule of maximum rates for the several classes of customers.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

La-k-o.

LIQUOR LAW. The establishment of saloons in residence districts is prohibited unless the consent of all the property owners within three hundred feet of the saloon is obtained.

The township board has no authority to refuse a license for reasons not specified in the statute.

August 10, 1910.

J. R. Beach, Walled Lake, Michigan:

Dear Sir—Your letter of August 9th submitting certain questions arising under the General Liquor Law, has been duly received.

For answer to the first question submitted would say that Section 37 of Act 291 of the Public Acts of 1909 provides in part that no license shall be issued to anyone to open up and establish a new bar or saloon in any residence district unless the consent of all the property owners within three hundred feet of said proposed bar or saloon be obtained. This provision applies to unincorporated villages as well as to incorporated villages. If the district is wholly or principally occupied as a residence district, the establishment of a saloon therein is prohibited unless the consent of all the property owners within three hundred feet of the saloon is first obtained. If the required consent of the property owners is not obtained, the township board has no authority to grant the application for a license.

For answer to the second question would say that section 4 of the General Liquor Law, as amended by Act 291, Public Acts of 1909, provides that the township board shall not approve the application of

any woman nor of anyone who is not a citizen of the State of Michigan or of the United States, or of any person who has served time in any State prison or penitentiary of this or any other state or of any person who has been twice convicted of violation of the liquor laws of this State or any other state. The statute thus defines specifically the classes of persons whose applications shall not be approved by the board. There is no general provision giving the board a discretion in the matter of granting or refusing a license for reasons not specified in the statute. The board does have a discretion in the matter of granting licenses under Section 39 of the act where the applications for licenses exceed the maximum number of licenses the township board is authorized to grant. If there are not more applications for licenses than the township board is authorized to grant, it cannot refuse to grant an application except for the reasons specified in the statute.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

INDETERMINATE SENTENCE LAW. A prisoner who was sentenced June 23, 1904, for the minimum term of one year and the maximum term of fifteen years and who on July 13th, 1906, was sentenced to a further term of from five to ten years upon conviction of the crime of arson committed by him in prison has twice previously been convicted of a felony within the meaning of the indeterminate sentence law and is not eligible to parole.

August 10, 1910.

Mr. James Russell, Warden, Upper Peninsula Prison, Marquette, Mich.:

Dear Sir—The Attorney General is in receipt of a letter from James L. Green, Register No. 1712, with reference to his status under the indeterminate sentence law.

It appears from his statement that on June 23, 1904, he was sentenced for a period of from one to fifteen years for burglary and that on July 13, 1906, he was sentenced to a term of from five to ten years upon the conviction of the crime of arson committed by him while confined in prison. It also appears that he served a term in prison at Jefferson City, Missouri, on the charge of burglary. He asks whether or not under the circumstances, he is eligible to parole and whether or not he may apply for a commutation of sentence.

Section 5 of Act 184, Public Acts of 1905, provides among other things that prisoners who have been twice previously convicted of a felony shall not be eligible to parole. It is clear that under this provision of the statute, Green, who has twice been convicted and sentenced to prison for the commission of a felony, is not eligible to parole under the terms of the indeterminate sentence law.

Section 16 of the indeterminate sentence law provides that nothing contained in the indeterminate sentence law shall be construed to interfere with the power of the governor to grant pardons or commutations of sentence. Under this provision of the statute and the constitution of

the State of Michigan, the prisoner would have the right to apply to the Governor for a commutation of sentence.

Will you kindly advise the prisoner of the conclusion of this department.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

PRIMARY ELECTION LAW. COUNTY COMMISSIONER OF SCHOOLS. Where the county commissioner of schools is elected at the spring election the primary election law does not apply to selection of candidates therefor.

August 10, 1910.

Mr. F. M. Bradshaw, County Commissioner of Schools, Gay, Keweenaw County, Michigan:

Dear Sir—I have your communication of August 8th relative to the application of the primary election law to candidates for county commissioner of schools.

In reply thereto would say it is understood that in Keweenaw county the county commissioner of schools is elected at the spring election. If I am correct in this, the primary election law does not apply to the office of county commissioner of schools in your county.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-k-o.

PRIMARY ELECTION LAW. COUNTY COMMITTEE. BALLOTS. Ballots are to be prepared for use of voters although no nomination petitions are filed. If there are no votes cast for candidates at the primary election the proper county committee may certify names of candidates to board of election commissioners.

August 11, 1910.

Mr. Scott Cilley, County Clerk, Standish, Michigan:

Dear Sir—I have your communication of August 10th in which you state that the primary election system has been adopted in your county. You ask whether the county committee can fill the ticket if there are not nomination petitions filed for the different offices.

In reply thereto would say the only purpose of filing nomination petitions is to secure candidates for offices the right to have their names printed upon the official primary election ballots. If, for instance, there were no nomination petitions filed for the candidates for offices this fact would not relieve the proper officers from the duty of preparing ballots for the use of the electors. In such case the electors could vote for candidates by writing their names or pasting printed slips in the

space on the ballot provided for that purpose. If, however, at such primary election there are no votes cast for any candidate for a particular office, the proper committee of the political party could certify the name of a candidate to the board of election commissioners and it would be the duty of the latter board to have such name printed upon the official election ballot as the party candidate for such office.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

PROSECUTING ATTORNEY. ELECTIONS—A board of election commissioners should not refuse to place the name of a candidate for prosecuting attorney who is not admitted to the bar upon the official ballot.

August 11, 1910.

Mr. John A. Stewart, Prosecuting Attorney, Harrisville, Mich:

Dear Sir—We are in receipt of your letter of the 8th instant, submitting the following inquiries:

“First. Can a man who has not been admitted to the bar to practice law in Michigan file a petition with the county clerk to become a candidate for the office of prosecuting attorney?

Second. Should the county clerk accept such petition as above stated?

Third. Would the board of election commissioners be obliged to print the name of such a person, who has not been admitted to the bar, as a candidate for the aforesaid office?”

In reply thereto will say that while it is the law of this State that a person who has not been admitted to the bar is ineligible to the office of prosecuting attorney—

People ex rel. Hughes v. May, 3 Mich. 598,
we regard it as doubtful if the county clerk or the board of election commissioners would be warranted in refusing to receive the candidate's petition or refusing to place the candidate's name upon the ballot. Such a course would require the examination of extrinsic matters to determine the candidate's qualification and determine that the candidate was ineligible upon grounds which might be removed by his qualification as an attorney at law before election.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

COUNTY CONVENTION. COUNTY COMMISSIONER OF SCHOOLS.

County convention called for September 14th cannot select candidate for county commissioner of schools to be voted for at the following spring election.

August 11, 1911.

Mr. John A. Stewart, Prosecuting Attorney, Harrisville, Michigan:

Dear Sir—I have your communication of August 4th in which you ask if the county convention which is called for September 14th would have power to nominate a candidate for county commissioner of schools instead of having the nomination made in the spring. You also ask if an official whose term of office expires January 1st would be barred from being a candidate for commissioner.

In reply thereto would say since it will be necessary to hold a county convention next spring for the purpose of selecting delegates to a State convention to nominate a candidate for justice of the supreme court, it would seem advisable to select a candidate for the office of county commissioner of schools at such county convention rather than the county convention which will be held this fall. I may also say that my attention has not been called to any statute which would prohibit a county officer from being a candidate for another office before his term of office expires.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

PRIMARY ELECTION LAW—FILING PETITION WITH FEE.

Candidates for nomination for an office in cities or counties of 250,000 population or more may file a petition accompanied by the prescribed fee in lieu of a petition signed by two per cent of the enrolled voters.

August 16, 1910.

Mr. George Lord, Board of State Tax Commissioners, Lansing, Mich.:

Dear Sir—Your oral inquiry relative to the petition which must be filed by a candidate for the nomination for an office in cities or counties of 250,000 population or more, has been considered. It is provided in sections 25, 26 and 27 of the Primary Election Act that a candidate must, in order to have his name printed upon the primary election ballots, secure a petition signed by not less than two per cent nor more than four per cent of a certain vote. There is a proviso, however, in section 27 of the primary election act which reads as follows:

“Provided, That in cities or counties of two hundred fifty thousand population or more, in lieu of the above petition, a petition therefor, signed by the candidate, which shall state the name of the candidate, his residence, street, house number, and the political party of which he is a member and the office sought, shall be filed with the clerk of the county or city where said candidate resides as herein provided. Such candidate shall at the time, pay to the clerk of the city or county as

the case may be, a sum of money equal to one-half of one percentum of the salary and fees of the preceding year of such office, the amount thereof to be ascertained as nearly as may be by such clerk; and upon complying with the above provisions such candidate's name shall be printed upon the primary ballot, if otherwise qualified."

My attention has not been called to any provision in the Primary Election Act which prescribes a different rule than that indicated in the above quoted language. It was clearly the intent of the Legislature to relieve candidates for nomination for office in cities or counties of 250,000 population or more, from the necessity of securing a petition signed by a certain percentage of enrolled voters as is prescribed in all other cases. The only condition prescribed for a candidate for a nomination in such cities or counties as are included in the above proviso is for the candidate to file a petition signed by himself which shall contain the required data, and at the same time pay the fee required by statute.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

PRIMARY ELECTION LAW—NOMINATION OF REPRESENTATIVES. The clause "equal to not less than two percentum and not more than four percentum" in section 26 of the Primary Election Law applies to candidates for the nomination for representative in districts comprised of one county or less.

August 17, 1910.

Mr. Walter C. Jones, Attorney at Law, Marcellus, Michigan:

Dear Sir—Your communication of August 16th relative to the Primary Election Law is received. You call attention to Section 26 thereof and ask whether in the case of a district which consists of less than one county, nominations can be made by the direct voting system.

The language of the first portion of said Section 26 is somewhat obscure, and unless the entire section is taken into consideration there is nothing to indicate the number of names which should appear upon a petition of a candidate for a district office of a district comprised of one county or less. However, Section 17 provides that candidates in every representative district shall be nominated at the primary election. It would therefore seem the safer rule to hold that the clause "equal to not less than two percentum nor more than four percentum," etc., in the latter portion of said Section 26 applies to candidates for the nomination for representative in districts comprised of one county or less.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

PRIMARY ELECTION LAW. ADVERTISEMENT. METAL DISCS.

The use of metal discs containing advertisement of candidate prohibited by primary election law.

August 17, 1910.

Hon. Burt D. Cady, Port Huron, Michigan:

Dear Sir—I have before me the advertising matter of W. F. Wagenseil. You ask whether the distribution of the same is in violation of the provisions of the Primary Election Law.

The advertising matter in question consists of aluminum or metal disks upon which is printed "Compliments of W. F. Wagenseil, Sheriff," and "William F. Wagenseil for Sheriff, St. Clair County."

Section 48 of Act 281 of the Public Acts of 1909,—the General Primary Election Act,—makes it unlawful for any person after he has declared himself a candidate for any office—

"To publish or cause to be published, pay for publishing or cause to be paid for publishing any printed matter whatsoever or any lithograph, half-tone engraving or other likeness of himself, or any other political advertisement of any kind or nature whatsoever which is intended, published or manufactured for the purpose of promoting or advancing his candidacy for such office or influencing voters relative to his said candidacy in or upon any magazine, program, bill of fare, ticket for any ball or other entertainment, *or upon or in any other substance or publication whatsoever.*"

It is believed that it was the intent of the Legislature in the passage of the Primary Election Law to prohibit advertising of the character in question. The use of the metal disks with the printing thereon is clearly an advertisement which comes within the acts prohibited by the section in question.

It is my opinion that the advertising matter in question violates the provisions of the General Primary Election Law.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

PRIMARY ELECTION LAW. NEWSPAPER LITHOGRAPHS. Lithographs larger than size prescribed by statute cannot be used for candidate under primary election law.

Full page matter relative to candidate may be printed if not more than ten percent of matter is printed in larger type than the regular type used in printing editorials.

August 17, 1910.

Mr. W. J. Hunsaker, Publisher, The Saginaw Courier-Herald, Saginaw, Michigan:

Dear Sir—I have your communication of August 11th, in which you submit inquiries under the General Primary Election Law. You ask

if a publisher may print whatever he pleases regarding a candidate's qualifications and use a full page cut, provided such matter is not authorized or paid for by the candidate or any one in his behalf.

In reply thereto would say Section 50 expressly provides that it shall be unlawful for a candidate for nomination to have inserted or published in any newspaper any lithograph, half-tone engraving or other likeness larger than one and one-half inches in width by two inches in height, or any advertisement in which more than ten percentum of the printed matter is printed in a larger type than the regular type used in printing the editorials of such newspaper, excepting therefrom the name of such candidate and the title of the office for which he is a candidate. Section 48 of the Primary Election Law also prohibits the use of lithographs, halftones, etc., larger than one and one-half inches in width by two inches in height. This section also provides:

"It shall be unlawful for any other person to do or perform for or on behalf of any such candidate, or to help or injure the candidacy of any candidate, any of the acts or things which it is by this act made unlawful for such candidate to do."

The foregoing makes it clearly apparent that you have no right to perform any act for and in behalf of any candidate that would be an unlawful act if authorized or performed by the candidate. The largest sized cut which you may lawfully use is one and one-half inches in width by two inches in height. The use of a larger cut, regardless of whether you are paid for it or not, would be a violation of the law.

I know of no objection to your printing a full page of matter relative to any candidate,—provided that not more than ten percentum of such matter is printed in larger type than the regular type used in printing the editorials in your newspaper.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

BUILDING AND LOAN ASSOCIATIONS. Have no authority to receive periodical installments exceeding two dollars per month on each share of stock.

August 22, 1910.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of August 11th, in which you state that it is the practice of certain building and loan associations in this State to receive periodical installments ranging from twenty-five cents to four dollars per share per month, in payment for shares of capital stock of such associations. You request an opinion upon the question of whether or not a building and loan association may lawfully receive periodical installments exceeding two dollars per month on each share of stock.

For answer thereto would say that Section 5 of the law regulating building and loan associations, as amended by Act No. 17 of the Public Acts of 1901, provides in part as follows:

"The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, not exceeding two dollars per month on each share: Provided, That the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate."

You will note from the terms of this Section that the periodical installments are not to exceed two dollars per month on each share.

In view of this provision I am unable to see how it can be claimed that a building and loan association has authority to provide that periodical installments may exceed two dollars per month on each share. The law is plain and susceptible to no other interpretation than that installments or dues shall not exceed two dollars per month on each share of capital stock.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-p-o.

PASSENGER FARES. Order of Michigan Railroad Commission fixing maximum passenger fare on Pontiac, Oxford & Northern Railroad Company, should be directed to the Grand Trunk Western Railway Company or to both.

August 22, 1910.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—In the case of Pontiac, Oxford and Northern Railroad Company vs. Michigan Railroad Commission, now pending in the circuit court for the county of Ingham, in chancery, we note that the order made by the commission, fixing the maximum passenger fare upon said railroad, is directed to the Pontiac, Oxford and Northern Railroad Company.

We have given the matter careful consideration and have arrived at the conclusion that the order should be directed to the Grand Trunk Western Railway Company, or to both the Grand Trunk Western Railway Company and the Pontiac, Oxford and Northern Railroad Company. We deem it advisable before proceeding further with the litigation that the order should be directed as herein indicated.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-p-o.

DAMS. AMENDMENT OF PERMIT. The board of supervisors should not amend the permit granted the Manistee County Electric Company to construct certain dams in the Manistee river in Manistee county, until after the proposed amendments have been published.

September 1, 1910.

Hon. W. W. Wedemeyer, Ann Arbor, Michigan:

Dear Sir—I have examined the question asked by you with reference to the authority of the Board of Supervisors of Manistee county to amend

the permit heretofore granted the Manistee County Electric Company to construct certain dams in the Manistee River in Manistee county without publication of the proposed amendments.

The proposed amendments relate to the elimination from the permit of the provision making the same subject to the laws and regulations of the State of Michigan and the United States hereafter in force and the alteration of the provision, reserving the right to inspect and examine the books and papers of the company by limiting the purpose for which the examination may be made.

In support of the right of the Board of Supervisors to amend the permit without publication, reliance is placed upon the case of *Valentine vs. Berrien and Springs Water Power Co.*, 128 Michigan 290 where it was held that the Board of Supervisors had the authority to amend a permit to construct a dam sixteen feet high by providing for the construction of a dam twenty feet high without re-publication.

In my judgment, that case is not controlling. The reason there given for permitting the amendment to be made without publication was that the public were not interested in the height of the dam and it appeared from the pleadings that the Water Power Company had purchased the flowage rights for a twenty-foot dam from all persons owning lands affected thereby.

I do not think it can be said that the public are not interested in the proposed amendment to the permit granted to the Manistee County Electric Company, and for that reason, I do not believe the case of *Valentine vs. Water Power Co.* is applicable. It would, therefore, seem to me advisable to give public notice of the proposed amendments before action thereon is taken by the Board of Supervisors of Manistee county.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

LA-c.

OFFICE. FILING OF BOND. Where a constable in a city files bond before the council has declared the office vacant because bond has not been filed before the expiration of the ten-day limit, the council cannot refuse to accept if it is a proper bond.

September 2, 1910.

Mr. William T. Yeo, Attorney-at-Law, West Branch, Mich.:

Dear Sir—I am in receipt of your communication in which you ask for my personal re-consideration of the question propounded by one Mr. Huck, of West Branch, to this department, upon which an opinion was rendered by the Deputy Atty. General under date of July 25. It appears from Mr. Huck's letter that on April 11th, 1910, he was notified of his election to the office of constable; that on the 18th day of the same month, he took the formal oath of office and filed the same with the city clerk; that on the 27th day of April he filed his bond; that the council refused to approve the bond for the reason that it was not

filed within the time required by the statute, and declared the office vacant.

The question submitted is whether the council could be compelled to approve the bond. The opinion rendered held that "If the council refused to approve the bond because the same was not filed within ten days, they were acting without authority and if that is the reason for refusal to so approve they could be compelled by mandamus to approve the bond."

Section 10 of Chapter 5 of the Fourth Class City Act, provides:

"All other officers elected or appointed in the city shall within ten days after receiving notice of their election or appointment, take and subscribe the oath of office prescribed by the Constitution of the State, and file the same with the City Clerk."

This provision was complied with.

In section 11 we find the following provision:

"Every other officer elected or appointed in the city, before entering upon the duties of his office and within the time prescribed for filing his official oath, shall file with the city clerk such bond or security as may be required by law or by any ordinance or requirement of the council and with such sureties as shall be approved by the council for the due performance of the duties of his office, except that the bond or surety of the Clerk shall be deposited with the city treasurer."

The time prescribed in this section for filing the bond is the time specified for filing the oath of office in section 42, namely, within ten days after receiving the notice of election.

Section 25 of Chapter 7 provides:

"Every constable before entering upon the duties of his office shall give such bonds for the performance of the duties of his office as may be required and approved by the council and file the same with the city clerk."

It will be noted that this provision does not require the bond of the constable to be filed within the time prescribed for filing his official oath. The question then immediately arises as to whether this provision or the provision in section 11 above quoted governs as to the time within which the bond must be filed. It is not necessary, however, to determine this question, in view of the provision of another section of the charter. Section 16 of Chapter 5:

"If any person elected or appointed to office shall fail to take and file the oath of office, or shall fail to give the bond or security required for the due performance of the duties of his office within the time limited therefor, the council may declare the office vacant, unless previous thereto he shall file the oath and give the requisite bond or security."

This section vests in the council the power and authority to declare any office vacant for failure to take and file the oath of office or give the required bond or security within the time limited therefor, unless the person elected shall before said action upon the part of the council, file the oath and give the requisite bond or security. In other words, if the provision of section 11 relative to the ten days is to govern, then the council at any time after the expiration of the ten days, if no bond has been filed, may declare the office vacant, but immediately upon filing the bond, even though such filing take place after the ten day limit,

the council is divested of its authority to declare the office vacant. When this rule is applied to the office in hand, it will be observed that Mr. Huck filed the required bond with the council for approval before the council declared the office vacant. On this account, it seems to me that it was the duty of the council to consider the bond both as to form and sufficiency of sureties and if the same met with the approval of the council, it was their duty to approve it. And, of course, it goes without saying that if the same did not meet with their approval it was their duty to not approve it, but the bond having been filed before the office was declared vacant, the council was without authority to reject the bond for the reason that it was not filed within the ten days, and if that is the only objection that the council has to the bond, it is my opinion that they could be compelled by mandamus to approve the same.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

K-k-o.

DESERTION AND ABANDONMENT. Under Act 144 of the P. A. of 1907, the offense of desertion and abandonment of a minor child is not shown where it appears that in a divorce proceeding the custody of the child had previously been awarded to the mother.

September 8, 1910.

Mr. William B. Brown, Prosecuting Attorney, Grand Rapids, Michigan:

Dear Sir—Your deputy sheriff, Mr. Turpstra has presented to this department for approval, an application for requisition upon the Governor of New York for the rendition of Charles H. Peck. The warrant attached charges Mr. Peck with deserting and abandoning his minor child. The affidavit shows that Mr. Peck is divorced from his wife and that the custody of the child in question was given to her by the decree, Mr. Peck being directed to pay \$3.00 per week until the child becomes fourteen years of age.

Under the provisions of Act 144, Public Acts of 1907, pursuant to which this complaint is made, we are of the opinion that the affidavit does not show the offense of desertion and abandonment to have been committed. The statute seems to us to contemplate the existence of the domestic relations of parent and child which relation could not exist where the custody of the child had been awarded to another. This department has refused to recommend the honoring of an extradition from another state under precisely the same circumstances.

We are of the opinion that the only remedy open is the civil remedy for contempt in violating the decree of the court providing for the child's support and that no criminal offense known to our statute has been committed so far as the facts set up in the affidavit show. We must therefore decline to approve the application.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

PRIMARY ELECTION LAW. ENROLLED VOTER. A voter who is registered but not enrolled not entitled to vote.

September 7, 1910.

Mr. J. Aldrich Holmes, Caseville, Michigan:

Dear Sir—I have your communication of September 6th, in which you state that you are an enrolled voter but that you were not permitted to vote at the recent election.

We cannot assume to advise you definitely without a complete understanding of all the facts and circumstances. I may say, however, that if you are an enrolled voter you should have been permitted to vote. It is possible, however, that you are simply registered and not enrolled. Unless you are enrolled you would have no right to vote.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

PRIMARY ELECTION LAW. BOARD OF ELECTION INSPECTORS.

Candidate for delegate may act upon board of primary election inspectors.

September 7, 1910.

Mr. C. F. Brown, Alma, Michigan:

Dear Sir—I have your communication of September 6th in which you ask whether a candidate for delegate has the right to sit upon the board of primary election inspectors, and if such person can be legally elected.

In reply thereto would say my attention has not been challenged to any provision in the Primary Election Law which would make it unlawful for a candidate for delegate to act upon the board of primary election inspectors. In the absence of any such provision I am of the opinion that a person sitting upon such board may be legally elected as a delegate.

Very respectfully yours.

FRANZ C. KUHN,

Attorney General.

L-k-o.

SCHOOL LAW. LEPPER. Children of leper may be admitted to public schools under certain conditions.

September 14, 1910.

Mr. James MacNaughton, General Manager, Calumet & Hecla Mining Company, Calumet, Michigan:

My Dear Sir—I have your communication of September 7th relative to the right of the children of a leper to be admitted to the public schools. I feel that this is a question which must necessarily depend

upon the facts and circumstances and must be answered according to the nature of the disease. Accordingly, I requested and secured an official opinion from Dr. Frank W. Shumway, Secretary of the State Board of Health, a copy of which is herewith enclosed. There are certain restrictive provisions outlined in Dr. Shumway's opinion which if followed would seem to confer upon the school board the right to admit the children in question to the public schools.

I trust the course I have pursued is satisfactory to you and assure you that if I can be of further service to you I wish you to feel free to call upon me.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.
encl.

State Board of Health, Michigan, Office of the Secretary, Lansing.

September 13, 1910.

Hon. Franz C. Kuhn, Attorney General, Lansing, Michigan.

My Dear Sir—Re the matter referred to in James MacNaughton's letter to you under date of the 7th inst., and which has been referred to you for an opinion, I would say, while leprosy is recognized by the medical profession and scientists as a communicable disease and the medium of communication seems to be through the nasal secretion, yet the method of transmission of the disease is still a mooted question, although the generally accepted opinion is by direct contact.

In the hot islands of the South among the natives this disease seems to be most prevalent, although in the States isolated cases appear, many of which are imported from other countries. And the fact that some of these isolated cases in the States have been in direct contact with the public, some of them for long periods of time, would seem to indicate that the disease was not very actively communicable.

In the case referred to in Mr. MacNaughton's letter, the leper (Jensen) having had the disease for five or six years at least, the past two years the disease has been active and progressive; and his family consisting of the wife and four daughters have been in close personal contact with him all this time; yet a careful examination of the wife and children aided by a laboratory analysis of the skin and nasal secretions from each of them, failed to show the slightest trace of the disease.

The removal of this man Jensen, and his isolation from the general public affords ample protection to that community from the spread of this disease, but I believe this restriction should not be extended to his family, except possibly the wife, who would be more or less in personal attendance upon her husband and more liable to contract the disease. But to subject the daughters to this isolation (none of whom may ever develop the disease) would, in my judgment, work a great injustice to the innocent, and is unwarranted, from a public health standpoint.

Now as to the matter of these girls attending the public schools, this could be done under the following conditions with absolute safety to the community: These girls of this family who desire to attend school should be thoroughly disinfected, all of their clothing disinfected and removed from this home, and supported elsewhere during the school term. Laboratory analysis of the nasal secretion of each of these girls should be made before they enter school, and every thirty or sixty days during the school term, to insure their entire freedom from the disease while they are in attendance at school. If these precautions are taken, together with other measures the local board may deem wise, I question the authority of the school board to exclude them. The school board, to refuse admission to a pupil, must show that such pupil is a menace to the school population, which they could not do if these conditions were complied with. During the school term, these children should have no direct contact or communication with their home; but after the school closes, they may be returned to the home; but even then I

do not believe they should be subjected to a strict quarantine, such as the father and mother will have to be subjected to. They should be allowed to come and go at their pleasure under certain restrictions laid down by the local board of health.

Now if these measures are carried out with this family, I believe that community will be amply protected and that there will be no danger of spreading this disease from this family.

Very truly yours,

F. W. SHUMWAY,

Secretary.

S/MAS.

INDETERMINATE SENTENCE LAW. A sentence for a definite period of three years imposed upon a person convicted of deserting and abandoning his wife and children under Act 144 Public Acts of 1907 is a valid indeterminate sentence for the maximum term of three years and the minimum term of one year.

September 16, 1910.

Mr. Wm. H. Andrews, Prosecuting Attorney, Benton Harbor, Michigan:

Dear Sir—I am in receipt of your communication of September 13th, in which you state that a person convicted of deserting and abandoning his wife and children under Act 144, Public Acts of 1907, was sentenced by the court to the Michigan State Prison at Jackson, for a definite period of three years. You state that he was not sentenced under the indeterminate law, Act 184 of 1905, and ask whether or not the sentence is a legal sentence.

In reply thereto would say that the punishment prescribed by law for desertion and abandonment of wife and children is imprisonment in the State Prison for not more than three years nor less than one year. Act 184 of the Public Acts of 1905 in terms applies to every person convicted of crime the punishment for which may be imprisonment in any one of the State prisons. Section 2 of the act provides that the maximum term of imprisonment shall not exceed the longest term fixed by law and that the minimum term shall not exceed one-half the maximum term. Then follows this proviso:

“That where the law prescribing the punishment for the offence of which the convict stands convicted, fixes the minimum term of imprisonment, then the minimum term fixed by law shall be the minimum term of imprisonment.”

It is our opinion that under these provisions of the statutes, the indeterminate sentence law applies to persons convicted of wife desertion and abandonment under Act 144 of 1907. It is also our opinion that the sentence imposed is a valid sentence for the maximum term of three years and the minimum term of one year. The fact that the court did not state the minimum term is immaterial. A sentence to imprisonment in the State prison was all that was necessary, as the statute fixing the punishment for the crime prescribed both the maximum and minimum punishment.

In re Duff, 141 Mich. 623.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

BOARD OF SUPERVISORS. COUNTIES. The Board of Supervisors has authority to audit and pay out of the contingent fund the expense of preparing plans and specifications for a county jail where the proposition for bonding to build such jail was lost.

September 27, 1910.

Hon. Earl Fairbanks, Luther, Michigan:

Dear Sir—We have examined with some care the proceedings of the board of supervisors of Lake county for the years 1908 and 1909, during which years the board of supervisors voted to have plans and specifications prepared for the building of a county jail and solicited bids for the same before the question of the bonding of the county for the construction of a county jail was submitted to the qualified voters. The proposition to bond the county was lost and the architects have submitted their bill for preparing the plans and specifications to the board for audit and allowance. You inquire whether the board may legally allow this bill which amounts to approximately \$200.00.

In reply will say that in our opinion the item in question does not come within the provisions of the statute relating to the borrowing and raising of money for building purposes as laid down in Section 2484, Compiled Laws and amendments thereto. We are rather of the opinion that it comes within Subdivision 16 of Section 2484 Compiled Laws of 1897 which gives the board of supervisors power:

“To represent their respective counties and to have the care and management of the property and business of the county in all cases where no other provision shall be made.”

In the very nature of things it is essential that the board of supervisors settle upon the general plans of a county building and determine the approximate cost of the same before they submit to the electors the proposition of bonding for the construction of such building. There is no way in which this can be done more effectually than in securing the preparation of plans and tentative bids for the construction of the building, and in that way the board is able to submit a definite proposition which the electors can understand and vote upon intelligently. It would be a narrow construction indeed which would deprive the board of supervisors of the power to do these things before submitting the proposition of the construction of the building to the electorate. There are no cases in Michigan or elsewhere which have been brought to our attention denying the power of the board in a case such as the one submitted.

We are of the opinion that the claim of the architects may properly be audited and allowed to be paid out of the contingent fund of the county.

The proceedings of the board of supervisors of Lake county for 1908 and 1909 are herewith returned.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

BOARD OF SUPERVISORS. Have no authority to amend a permit to construct dams in a navigable stream without publication of the proposed amendment.

October 12, 1910.

Mr. Charles N. Belcher, Prosecuting Attorney, Manistee, Michigan:

Dear Sir—I am in receipt of your letter of recent date with reference to striking out the words “or hereafter” from the clause “this permit is subject to all valid laws and regulations of the State of Michigan and of the United States now or hereafter in force,” occurring in a permit granted by the board of supervisors of Manistee county to the Manistee County Electric Company to construct certain dams in the Manistee river.

You state that in your opinion the retention of these words would subject the provisions of the permit granting a preferential rate to the county and the municipalities therein to alteration by future legislation. The opinion of this department upon the question is requested.

In reply would say that under Section 14 of Article VIII of the Revised Constitution, the board of supervisors is authorized to make permits of this character subject to such conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. The board of supervisors of Manistee county acting under this provision provided as one of the conditions that the county and the municipalities therein should have the preferential rate and also provided that the permit should be subject to all valid laws of the State of Michigan and of the United States hereafter in force. With the latter provision in the permit it seems to me it might well be contended that the provisions of the permit giving the county and the municipalities therein a preferential rate would be subject to alteration by future legislation. The elimination of the words “or hereafter” would in my judgment operate to preserve to the county and the municipalities therein the preferences granted to them by the terms of the permit secure from interference through future legislation. The elimination of these words, on the other hand, would not prevent the application of future legislation not inconsistent with the provisions of the permit.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-k-o.

BANKING LAW. COLLATERAL DEPOSIT COMPANIES. Real estate mortgages may not be deposited with Collateral Deposit Companies organized under Act 240 of the P. A. of 1907 and participations therein sold to savings banks as investments.

Savings Banks may invest in participating notes on real estate mortgages deposited in a trust company over which the banking commissioner has supervision.

Banks may not invest in such participating notes secured by mortgages held by a foreign trust company or by domestic corporations other than the trust company.

October 12, 1910.

Hon. Henry M. Zimmermann, Commissioner of the Banking Department,
Capitol, Lansing:

Dear Sir—We have given careful consideration to your letter of September 22d, in which you submit the inquiry as to whether real estate mortgages may be deposited with collateral deposit companies organized under the provisions of Act 240, Public Acts of 1907, and participation notes therein thereby become lawful investments for savings banks. A conference with the representatives of the institutions affected by the question above stated has developed additional questions, namely; if collateral deposit companies may not be the depositories for such mortgages; may a domestic trust company be such depository; also may a foreign trust company or a domestic corporation, partnership or individual not subject to supervision of the banking department be such depository.

The statutory provisions involved in the questions above submitted are Section 9 of Act 240 Public Acts of 1907, which reads as follows:

"Any corporation organized under this act shall have power to conduct a safety deposit business for the safekeeping of any personal property, and to provide proper vaults and premises for the same; and shall also have power to receive on deposit in trust any personal property deposited with it by individuals, partnerships or corporations, as collateral security for the payment of bonds or other obligations issued by such individuals, partnerships or corporations, and to enter into and execute any instruments in writing necessary and proper to carry such trusts into effect."

Also subdivision I of section 27 of the Banking Law which authorizes State banks to loan and invest savings deposits as follows:

"Upon notes or bonds secured by mortgage lien upon unincumbered real estate worth at least double the amount loaned; the remainder of such deposits may be INVESTED in *notes, bills or other evidences of debt* the payment of which is secured by deposit with the bank of *collateral security consisting of personal property or securities* of known marketable value worth ten per cent more than the amount so loaned and interest for the time of the loan; or may be invested in *notes, bills or other evidences of debt* the payment of which is secured by *such property or securities* deposited in a collateral deposit company organized under the laws of this State."

Also the proviso of Section 52 of the Banking Law, which is as follows:

"Provided, however, That the foregoing limitations shall not apply to *loans on real estate or other collateral securities* authorized by this act and deposited with the bank or a *safety and collateral deposit company* organized under the laws of this State."

It is apparent that the proviso to Section 52 can furnish no assistance in determining the scope of the provisions of Subdivision I of Section 27 by reason of the general rule of statutory construction that a proviso does not enlarge the scope of the enacting section.

Sutherland's Statutory Construction, Sec. 352. It is also apparent that "notes or bonds secured by mortgage lien, etc.," are not included among the securities which are authorized to be deposited in a collateral deposit company under the terms of said Subdivision I of Section 27 above quoted unless it can be said that such "notes or bonds secured by mortgage lien" are also included in "notes, bills or other evidences of debt the payment of which is secured by deposit with the bank of collateral security consisting of personal property or securities of known marketable value, etc." We are of the opinion that they are not so included. It is our view that the second clause of Subdivision I, being that last above quoted, refers to notes, bills or evidences of debt which are secured by the deposit of personal chattels or securities such as promissory notes, bonds or other evidences of debt the title of which passes by the mere act of delivery. This would, of course, exclude real estate mortgages. We therefore hold that real estate mortgages may not be deposited with collateral deposit companies organized under the provisions of Act 240 Public Acts of 1907 and participations therein sold to savings banks as investments.

The first clause of Subdivision 1 of Section 27 of the Banking Law authorizes banks to loan savings deposits "upon notes or bonds secured by mortgage lien upon unincumbered real estate worth at least double the amount loaned." There is nothing in the Banking Law directly requiring real estate mortgages to be taken in the name of the bank when such loans are made. We are constrained, however, to hold that the law contemplates that the bank shall hold the title to such securities. It is essential that the banking department in making an examination of the affairs of the bank have an opportunity to examine the mortgages upon which such notes or bonds are predicated in order that the department may know the nature of the instrument, the description of the property and such other facts as will enable it to determine whether the loan is proper under the provisions of the statute.

Where, however, such real estate mortgage is placed in a trust company organized under the Michigan laws and over which the banking commissioner has adequate supervision, we think the commissioner would be acting within the spirit of the law if he permitted the mortgage to be taken in the name of such trust company and deposited with it allowing the banks to loan upon participating notes in such mortgage. We do not however believe that a bank would be authorized to invest in participating notes secured by a mortgage held by a foreign trust company or by a domestic corporation other than a trust company, a partnership or individual for the reason that the banking commissioner

would have no authority under the law to examine the mortgage in such cases and thus determine the propriety of the loan.

We are further of the opinion that Section 9 of Act 240, Public Acts of 1907 does not authorize a collateral deposit company to be the owner or trustee of a real estate mortgage, but limits its authority to that of acting as trustee of personal property and collaterals such as would pass by manual delivery.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

INSURANCE. FOREIGN INSURANCE COMPANIES. The insurance Department of this State will recognize the interpretation placed upon the powers of a foreign insurance company by the Commissioner of Insurance of its home state.

October 12, 1910.

Messrs. Merriam, Yerkes, Simons & Ladd, Ford Bldg., Detroit, Michigan :

Gentlemen—We are in receipt of your letter of September 26th relative to admission of the Maryland Motor Car Insurance Company to do business in the State of Michigan.

If the company which you represent obtains a certificate of authority from the Commissioner of Insurance of Maryland showing that it has authority to conduct a fire insurance business or a combined fire and marine insurance business, and can otherwise comply with the laws of this State relative to the admission of fire or fire and marine insurance companies, we cannot do otherwise than advise the Commissioner of Insurance to issue a certificate of authority to the company to do those kinds of business. It has been the practice of this department to recognize the interpretation placed upon the powers of a corporation by the officials of the State in which it is organized, and we would therefore recognize the interpretation placed upon the powers of this corporation by the Commissioner of Insurance of Maryland should he issue a certificate of authority to the company authorizing it to do a fire insurance business or a combined fire and marine insurance business.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

HIGHWAYS. TOWNSHIP ROAD BONDS. The provisions of section 9 of chapter 14 of act 283 of the P. A. of 1909, requiring all moneys paid out to be on the order of the Commissioner of Highways countersigned by the township clerk, applies only to moneys realized from the sale of township road bonds.

October 19, 1910.

Hon. O. B. Fuller, Auditor General, Lansing, Michigan:

Dear Sir—We are in receipt of your letter of October 18th, calling our attention to apparent discrepancies between Sections 7 and 9 of Chapter 14, Act 283, Public Acts of 1909.

In reply thereto will say that Sections 8 to 18, of Chapter 14, are substantially identical with Act 231, Public Acts of 1903, and it is apparent that the person preparing the bill which became Act 283 neglected to change the word "Act," as used in Section 9, so as to apply only to that portion of the act relative to township road bonds.

We think the careful reading of the chapter indicates that the provision of Section 9, requiring all moneys paid out to be paid on the order of the Commissioner of Highways, countersigned by the township clerk, applies only to moneys realized upon the sale of township road bonds, while the provisions of Section 7 relate to moneys raised for highway purposes by taxation.

Very respectfully yours,

FRANZ C. KUHN.

Attorney General.

Hi-m-o.

SALARIES IN DEPARTMENT OF PUBLIC HEALTH. BACTERIOLOGICAL DEPARTMENT. All persons employed in bacteriological department except bacteriologist entitled to compensation provided for general clerks.

October 19, 1910.

Frank W. Shumway, M. D., Secretary State Board of Health, Capitol, Lansing:

Dear Sir—I have your communication of October 10th in which you ask for an interpretation of Act 109 of the Public Acts of 1907, in so far as it relates to payment of salaries.

The act to which you refer provides for the appointment of a bacteriologist and for the purchase of necessary appliances and apparatus for bacteriological examinations. I apprehend the only question presented is in regard to the salary of those employes engaged in connection with the bacteriological work other than the bacteriologist. The only language in the act bearing upon this subject is set forth in Section 4 thereof, which provides, in part:

"That any part of the appropriation herein provided for, not expended for the salary of the bacteriologist or for purchasing apparatus, material and appliances may be used by the said board of health in compiling general information in regard to bacteriological examinations and for such other purposes in connection with the bacteriological work of the

department of public health as shall be deemed advisable and necessary by the said board."

There is no question but the language in the above quoted provision which confers upon the State Board of Health the right to have general information compiled carries with it the right to engage employes and clerks to perform this service. Except as provided in said section 4, there is no authority in the act for employing anyone except the bacteriologist whose salary is fixed by the State Board of Health. Any persons employed under authority of said section 4 to carry out the intent and purpose thereof must be considered as standing in the same position as any clerk in the department of public health.

I am therefore of the opinion that such clerks as are engaged in the work authorized under said section four of the act in question are entitled to such compensation as is provided for by general law for clerks in the department of public health.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-k-o.

SCHOOL CENSUS. SUPERINTENDENT OF PUBLIC INSTRUCTION. If additional time for forwarding school census granted by superintendent of public instruction, names not procured during the regular time for taking census may be included in school census.

October 19, 1910.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I have your communication of October 10th which reads in part as follows:

"The census enumerators of the City of Grand Rapids took the school census presumably according to law during the twenty days next preceding the first Monday in June, 1910. This census list properly sworn to, and executed in all respects in a lawful manner, was filed in this office on August 16, 1910. The statute requires that this census list be filed with the Superintendent of Public Instruction before the second Monday in July. (See page 33.) It appears that sometime after this, presumably early in August, they obtained a transcription of the United States census list of Grand Rapids. When this list was compared with the school census list they found the names of 364 children between the ages of five years and twenty years which were not on their school census list. The enumerators verified these names. A supplementary list was sworn to sometime in September, probably September 15, and filed in this office on September 16. We returned a supplementary list, stating our intention to not include these 364 names in the apportionment of primary money that is based on the school census list of 1910.

"Will you, in the light of this statement of facts and the accompanying correspondence, advise us whether or not we should include these names in the school census list of 1910?"

In reply thereto would say it is understood that notwithstanding the fact that it was the duty of the secretary of the board of education of

Grand Rapids to forward the census report to your office before the second Monday in July, that permission was granted by your department to file the report at a later date. In the correspondence attached to your communication it appears that under date of August 18th the said secretary was advised that "we will keep your census report open until September 15th, but it must close on that date." It also appears from the communication of Thomas Perry to your department under date of September 15th that on the afternoon prior thereto 364 additional names were forwarded to your department. In view of the foregoing it would seem that if you have the right to do so, that you have waived your right to insist that only those names shall be considered that were included in the census report that should have been transmitted to your department before the second Monday in July. We feel under the circumstances, this is not a proper case in which to have determined the question of your right to grant additional time for transmitting the census report to your department. I am of opinion that if it appears from the reports filed with you, or if you shall determine that the 364 names in question should have been included by the census enumerators that you have a right to consider such list of names in apportioning the primary school money.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

SALARY LOAN LAW. Act 337 of the P. A. of 1907, applies only to cities having 20,000 inhabitants according to the State Census of 1904.

November 16, 1910.

Mr. Fred W. Brennen, Attorney-at-Law, Flint, Michigan:

Dear Sir—With reference to your inquiry concerning the construction of Act 337, Public Acts of 1907, the language reading as follows:

"Section 1. It shall be lawful, notwithstanding any other law to the contrary, for any individual, partnership, association or corporation, loaning money in any city in this State, containing more than *twenty thousand inhabitants, according to the last enumeration taken by the State.*"

It is my opinion that this is limited to cities of 20,000 inhabitants, according to the last enumeration taken in this State, in accordance with the language of the statute and if the population of a city had increased since the said last enumeration to more than 20,000 inhabitants. I do not believe it would be brought within the provisions of this act. The language of the statute is explicit and I do not see how it could be interpreted in any other way.

Yours very truly,

FRANZ C. KUHN,

Attorney General.

K-m-o.

MOTOR VEHICLE LAW. Person employed as a city salesman and who in the course of his employment incidentally operates a motor vehicle owned by his employer is not required to register as a chauffeur under the motor vehicle law.

November 16, 1910.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing, Michigan:

Dear Sir—I am in receipt of your letter of the 12th instant, in which you ask whether, or not a person employed by a company in the capacity of city salesman, and who in the course of his employment incidentally operates a motor vehicle, owned by the company, is required to register as a chauffeur, under the provisions of Act 318, Public Acts of 1909.

For reply thereto would say that by the terms of section one of the act, a chauffeur is defined to be: (1) One who operates a motor vehicle for hire, and (2) one who operates a motor vehicle as the employe of the owner thereof. The act also contains provisions relative to the registration of "every person desiring to operate a motor vehicle as a chauffeur" and prohibiting the driving of motor vehicles upon the public highways by unregistered chauffeurs.

That a person operating a motor vehicle, under the circumstances as stated in your letter, is not a chauffeur within the meaning of the first part of the definition, above given, seems obvious, as that provision only refers to those operating motor vehicles for hire. This evidently refers to those persons who operate such vehicles for the transportation of persons or property and charge a compensation therefor.

Neither in my opinion does such a person come within the second part of the definition of chauffeur, above given. It is my opinion that when the Legislature defined the chauffeur to include a person operating a motor vehicle as the employe of the owner thereof, it meant to include only such persons as are employed in whole or in part for the purpose of operating motor vehicles. The employment in the case stated by you is in the capacity of city salesman and the fact that such salesman, to facilitate the conduct of his business incidentally operates a motor vehicle, owned by his employer, does not make him a chauffeur, within the meaning of that term as defined in the act. He is not employed by the owner for the purpose of operating a motor vehicle, but is employed by the company for the purpose of disposing of its product.

I am, therefore, of the opinion in the case stated by you, that the salesman would not be required to register as a chauffeur, under the provisions of the act.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

La-m-o.

IN RE DEPORTATION OF ALIENS. Who have been in the United States less than three years.

November 1, 1910.

Superintendents of the Poor, Judges of Probate, and Superintendents, etc., of all State Institutions:

The following letter, etc., was sent to all of the above listed officers, (and also given to the Associated Press correspondents).

We are enclosing you herewith blanks to be used by you in reporting to the inspector-in-charge, United States Bureau of Immigration, all defective aliens who have been in this country less than three years and are, therefore, subject to deportation under the provisions of the United States statutes, printed on the back of the enclosed blank. Your careful and prompt attention to cases of this character will relieve your county and the State of the care and maintenance of many persons who would otherwise become public charges.

The inspector-in-charge of the Immigration Bureau at Detroit, Michigan, in cases arising in the lower peninsula and at Sault Ste. Marie, Michigan, in cases arising in the upper peninsula, will gladly co-operate with you in bringing about deportation of aliens who are not eligible to remain in this country under the provisions of our immigration laws. It is essential that the blanks enclosed be carefully filled out and mailed to the proper inspector as soon as the necessary information can be gathered.

The Attorney General will furnish additional blanks when requested.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m.
(H.)

BLANKS FOR USE BY SUPERINTENDENTS OF POOR, JUDGES OF PROBATE AND SUPERINTENDENTS OF STATE INSTITUTIONS IN SECURING THE DEPORTATION OF ALIENS WHO HAVE BEEN IN THE UNITED STATES LESS THAN THREE YEARS.

EXECUTE IN TRIPLICATE.

If alien is in lower peninsula, mail three copies to United States Immigration Service, Inspector-in-charge, Detroit, Michigan.

If alien is in upper peninsula, mail three copies to United States Immigration Service, Inspector-in-charge, Sault Ste. Marie, Mich.

Name of institution Date.....
 Name Alias Age..... Sex
 Married or single..... Nationality (of what country a citizen or subject)..... Descent Port of embarkation Month Year..... Date
 Landed..... Month..... Year.....
 (Name of port.)
 Date..... Name of Steamship Name of SS. Line Last residence in old country.....

Nearest relative in old country..... Designation
 (Or country from which alien came.)
 at time of landing Names of friends or
 relative who accompanied him or her on ocean voyage over
 Ever resided in United States before.....
 (If so, for how long a period.)
 Cause or causes for his
 or her becoming a public charge Whether cause
 for his or her becoming a public charge existed prior to landing
 Date of commitment
 (To institution.)
 Remarks:
 Whether ever before inmate of, and public charge in any public institu-
 tion

.....,
 Superintendent of
 P. O. Address....., Mich.

INSTRUCTIONS.

The within blank is published under the direction of the Attorney General at the suggestion of the inspector-in-charge, United States Immigration Bureau, Detroit, Michigan. The cooperation of the superintendents of the poor, judges of probate, and superintendents of State institutions is urgently requested to the end that the State and the respective counties may be relieved of the expense of maintenance of all defective aliens who are subject to deportation. A careful investigation should be made and the blank should be carefully filled out and promptly mailed to the proper inspector in every case where the facts tend to show that the person is subject to deportation. Additional blanks will be furnished by the Attorney General upon request.

UNITED STATES STATUTES GOVERNING DEPORTATION OF ALIENS.

(Act of February 20, 1907.)

What Aliens May Be Excluded.

"Section 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; * * * * * prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose."

How Aliens May Be Deported.

"Section 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence his entry into the United States. Such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that cannot be done, then the cost of removal to the port of deportation shall be at the expense of the 'Immigrant fund' provided for in section one of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessel or transportation line by which such aliens respectively came; * * * * *"

"Section 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this Act, and a failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section nineteen of this Act: Provided, That when in the opinion of the Secretary of Commerce and Labor the mental or physical condition of such alien is such as to require personal care and attendance, he may employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in like manner."

CITY CHARTER. CHARTER COMMISSION. Minutes of charter commission including vote taken when charter approved should be attached to proposed charter when submitted to the governor.

November 29, 1910.

Hon. Fred M. Warner, Governor, Capitol, Lansing:

Sir—I have before me the proposed charter of the City of Wyandotte and also the proposed charter of the City of Escanaba.

The proposed charter of the City of Wyandotte seems to comply with the statutory provisions.

Relative to the proposed charter of the City of Escanaba, would say that it would seem preferable to have that portion of the minutes of the charter commission at which the proposed charter was adopted attached to the proposed charter, which would necessarily include the vote of the members of the charter commission. I wish particularly to call your attention to the fact that this proposed charter does not indicate

how it shall be published or when or in what manner it shall be submitted to the electors. I would suggest that these matters be remedied before same is approved.

The two charters are herewith returned.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

BOARD OF SUPERVISORS. TOWNSHIPS. CONTAGIOUS DISEASE CLAIMS. Contagious disease bills should be presented to the Board of Supervisors except in counties governed by special statute.

November 29, 1910.

Mr. William F. Kracht, County Clerk, Mt. Clemens, Michigan:

Dear Sir—I have given attention to your letter of November 17th, in which you submit the question as to whether bills for the care of persons afflicted with contagious diseases should be presented to the Board of Supervisors for payment or whether they should be presented to the township, the distinction between township and county poor being maintained in your county.

In reply thereto will say that in the absence of a special statute, such as is in force in the counties of St. Clair, Huron and Lapeer, providing that bills for the care of persons afflicted with contagious diseases should be charged to the township, village or city, we think these bills should be presented to the county. The services rendered are in the nature of a health regulation and in our judgment are not subject to the statutory provisions for the relief of poor persons where the distinction between township and county poor has not been abolished. This has been the holding of this department for many years and I enclose you herewith a copy of an opinion, under date of October 24, 1901, which covers the matter.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

PROBATION LAW. One placed upon probation after conviction of crime is in the custody of the court during the entire probationary term and during that time may not be arrested for an offense not committed during the probationary term.

November 29, 1910.

Mr. Clare E. Hoffman, Prosecuting Attorney, Allegan, Michigan:

Dear Sir—I am in receipt of your letter of November 23rd, in which you state that three young men last summer took a boat from an Ottawa county harbor into Lake Michigan, dismantled it and turned it adrift. A few days afterwards they repeated the offense at Saugatuck in Allegan county. That they were arrested by the Ottawa county officers and one of the offenders pleaded guilty at the last term of court and was placed upon probation by the circuit judge for one year. That you have

a warrant for him for the transaction which occurred in Allegan county, but that it is claimed that the Allegan county officers have no right to arrest him for the crime while he is out on probation for the offense committed in Ottawa county. You request an opinion on the question of whether or not he may be arrested for the offense committed in Allegan county during the time he is on probation for the crime committed in Ottawa county.

For answer thereto would say that the law providing for the placing of criminals upon probation is Act 91, Public Acts of 1903, as amended by Act 124, Public Acts of 1909. This law provides for the placing of first offenders upon probation under the charge and supervision of a probation officer in the following manner:

"First. Before passing sentence, the court before whom he stands convicted may place the defendant in the custody and under the supervision of the probation officer, or some other suitable person, and under such terms and conditions as it may require and may require a recognizance with one or more sufficient sureties and in such penalty as the court may deem reasonable, conditioned for the appearance of the respondent at such times as the court may order;

Second. At any time during the probationary term of a person convicted and released on probation as aforesaid, the court before which the person was so convicted, when presided over by its judge at the time of the conviction, or his successor in office, may in its discretion revoke and terminate such probation. Upon such revocation and termination the court may immediately pronounce judgment imposing fine or imprisonment, or both, at any time thereafter within the longest period for which the defendant might have been sentenced. The court whenever satisfied that the respondent has sufficiently reformed, that it is reasonably certain that he will not thereafter pursue a life of crime, may terminate said probation and discharge the respondent from custody.

Approved May 26, 1909."

It will be observed that by the terms of this act the person placed upon probation is in the custody of the court during the entire probationary term. At any time during that term, the court is authorized, in its discretion, to revoke and terminate such probation and the court can then pronounce judgment and impose fine or imprisonment, or both, upon the defendant, or whenever satisfied that the defendant is sufficiently reformed, he may terminate the probation and discharge the defendant from custody. If the defendant may be arrested during the probationary term for an offense not committed during that term and be sentenced therefor, the effect would be to nullify the action of the court in placing the defendant upon probation and to set aside in that case the provisions of the law authorizing the placing of persons upon probation. It seems to us that it is wholly inconsistent with the theory of this law to say that a person placed upon probation may, during the probationary term, be arrested for another offense committed prior to the time such person was placed upon probation.

It is, therefore, our opinion that in the case under consideration, the officers of Allegan county would have no authority to arrest the person

placed upon probation until after the termination of the probationary term imposed by the circuit judge of Ottawa county.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-m-o.

JUVENILE COURT LAW. County Agents. The county agent is entitled to expenses and per diem for approving homes in which it is sought to place children from private incorporated institutions.

November 29, 1910.

Mr. George V. Weimer, Prosecuting Attorney, Kalamazoo, Michigan:

Dear Sir—Mrs. Isabelle T. Richards, of Augusta, has referred to us your letter to her of November 12th, relative to the fees of your county agent, Mr. Merrill, amounting to \$3.00, which he asks her to pay as a condition precedent to the approval of the adoption of a child which has been placed in her home by the Rocky Beach Benevolent Association of this city.

This department held in an opinion to Marl T. Murray, Secretary State Board of Corrections and Charities, under date of May 11th, 1910, that by reason of the amendment to the juvenile court law, contained in Section 11, Act 310, Public Acts of 1909, county agents were entitled to be paid expenses and per diem for the approval of homes where it was sought to place children from private institutions. We enclose you herewith a copy of this opinion.

These expenses and per diem, by reason of section 4 of the juvenile court law, upon being properly certified by the probate judge, are audited and allowed by the Board of State Auditors in the same manner as other services of county agents, under the juvenile court act. Upon our advice, the Board of State Auditors have been allowing and paying county agents for services of this character, and it is our opinion that the provision contained in section 11 repeals, by implication, the provisions of the statute to which you refer in your letter, relative to the fees of the county agent. We come to this conclusion for the reason that section 11 provides the amount of compensation for the same services which is provided for in the section to which you refer.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

DEPOSITORIES OF COUNTY FUNDS. Act 99 of the Public Acts of 1909 which authorizes the board of supervisors to designate banks as depositories of county funds does not apply to private banks. If a private bank is designated as a depository the designation would not relieve the treasurer or his bondsmen from liability.

November 29, 1910.

Messrs. Whitaker Bros., Chamber of Commerce Bldg., Detroit, Michigan:

Gentlemen—I am in receipt of your letter of November 25th in which you ask whether or not, under the provisions of Act 99, Public Acts of 1909, the Board of Supervisors of a county may designate a private bank as a depository of county funds and also whether or not, in the event that a private bank is designated as such depository, the sureties upon the official bond of the County Treasurer will be relieved from liability in case the bank fails.

For reply thereto will say that this department has ruled that Act 99, Public Acts of 1909, which authorizes the Board of Supervisors to designate banks as depositories of county funds, does not apply to private banks.

If the law does not authorize the designation of private banks as depositories, it follows that the Board of Supervisors would have no authority to make a private bank a depository of county funds and this being true we are of the opinion that the sureties upon the official bond of the county treasurer would not be relieved from liability in the event of the loss of county funds deposited in private banks.

If the Board of Supervisors should designate a private bank as a depository of such funds, the designation although illegal, would not relieve from liability, the sureties upon the bonds given by the private bank to secure the safekeeping and repayment of the deposit.

(People vs. Bankers Surety Company 158 Mich. 30.)

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-m-o.

COMMISSIONER OF SCHOOLS. Candidates therefor required to be nominated by the Convention system.

November 29, 1910.

Hon. D. G. F. Warner, Frankfort, Michigan:

Dear Sir—Your communication of the 25th instant duly received and contents noted. You request an opinion as to the proper procedure in selecting candidates for the office of County Commissioner of Schools.

In reply thereto would say that candidates for the office of County Commissioner of Schools, to be elected at the spring election, will have to be nominated by the convention system, as the general primary election act does not apply thereto. By reason of the fact that the general primary election act does not provide for the election of delegates to such

a convention it will be necessary for the delegates to such a convention to be elected in the manner in which such delegates were elected prior to the adoption of the general primary election act.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

M-m-o.

MILITARY LAW. EXPENSE OF MAINTAINING QUARANTINE.

Expenses incurred by troops in maintaining quarantine should be paid by the Auditor General and charged to the proper county.

November 29, 1910.

Hon. Fred Z. Hamilton, General Accountant, Capitol, Lansing:

Dear Sir—I have your communication of November 22d enclosing special military order No. 34, which directs and requires certain officers and a certain number of enlisted men to proceed to Lapeer to enforce the quarantine placed on the Home for the Feeble-Minded by the State Board of Health. The request for aid was made by the mayor of Lapeer. You ask whether your department would have authority to pay the troops for the services rendered and charge the same to the county of Lapeer.

In reply thereto would say Section 40 of Act No. 84 of the Public Acts of 1909 provides, in part, that:

“In case of riots, tumults, breaches of the peace or formidable resistance to the execution of the laws of the State, or of the United States within the State, or reasonable apprehension of immediate danger thereof with which the civil authorities are unable to cope, upon application by telegram or otherwise of any United States marshal, mayor of a city or sheriff of a county, the Governor may order into actual service all or such portion of the Michigan national guard as he may deem requisite for the emergency.”

This section also subjects any officer or enlisted man who refuses or neglects to obey any order issued to serious punishment. It is evident that the order in question which was issued by the Governor was issued under authority of this section. Section 46 of the same act prescribes the compensation of all officers and enlisted men in such cases. Said Section 46 requires the Auditor General to audit such bills when presented and properly certified by the commanding officer and approved by the quartermaster general. This section also provides that:

“The Auditor General shall, upon auditing and allowing such accounts, draw his warrant therefor upon the State Treasurer, who is hereby authorized and required to pay the same, and any such sums so audited and paid are hereby appropriated out of the moneys in the general fund not otherwise appropriated. The Auditor General shall charge all such moneys so drawn to the county or counties in which such service is rendered, to be collected and returned to the general fund in the same manner as any other county indebtedness to the State is required by law to be collected and returned to the general fund.”

It is clearly evident from the foregoing that the mayor of the City of Lapeer possessed the right to request aid from the military forces through

the Governor and it is equally clear that the Governor was acting well within his powers and possessed the right to detail officers and enlisted men to enforce the quarantine in question. My attention has not been called to any other provision of law which bears upon this question. It becomes the duty of the Auditor General after the bills are audited and allowed to draw his warrant for the payment of same and the amounts so drawn are charged to the general fund. It also makes it the duty of the Auditor General to charge such amount to the county in which the service is rendered. The statute makes this matter a county charge regardless of where the service is rendered. The fact that aid was requested by the mayor of the City of Lapeer does not seem to alter the circumstances.

It is my opinion that the Auditor General possesses the right and that it is his duty to audit the bills in question when properly certified by the commanding officer of the troops and approved by the quartermaster general, and that when so audited it is his duty to draw warrants for the payment of same, which amount should be charged to the general fund. The money so drawn should then be charged to the county of Lapeer and when collected placed in the general fund.

Very respectfully yours,

FRANZ O. KUHN,

Attorney General.

L-k-o.

SCHOOL LAW SCHOOL BOARD. It is the duty of school board to admit to school all children whose parents or guardians reside therein.

November 30, 1910.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I have your communication of November 25th, enclosing a considerable amount of correspondence relative to the right of certain boys to attend school in a certain school district in Charlevoix county. Your letter reads, in part, as follows:

“My understanding of the case is that these boys are sent by Judge Willis Brown, Gary, Indiana, to his brother in Charlevoix county. The boys are taken from different reformatory institutions and Judge Brown is allowed to keep them as long as they do not become incorrigible; when they get beyond his control they are returned to the institution from which they were taken. Neither Judge Brown or his brother is made the legal guardian of the boys in question. It appears that the boys have made some trouble in the district where they attend school and the board has refused to admit them.

“Will you please answer the following questions for me:

“First. Must the board admit children who have neither parents or legal guardians living in the district?

“Second. Has the board the right to exclude pupils who are incorrigible and make trouble in the schools?”

In a letter from Willis Brown to William Bashaw under date of November 17th 1910 a copy of which you have enclosed the following appears:

"You should perfectly understand that the five boys who are living on my farm are living there just as any boy lived in a home. This is their home and will be for years. They are in charge of an adult who assumes parental authority over them, my brother, Fred H. Brown."

I assume from your letter and from an examination of the correspondence enclosed that Judge Willis Brown is a resident of Gary, Indiana, and has secured the boys in question from reformatory institutions and keeps them on his farm in Charlevoix county. I am not advised whether the reformatory institutions in question are within or without this State.

If we were to hold in answer to your first question that a school board must admit only those children who have parents or legal guardians residing in the school district, such holding might result in an evasion of the compulsory school law, as under authority of Section 244, the pamphlet of General School Laws, revision of 1909, it is the duty of

"Every parent, guardian or other person in the State of Michigan having control and charge of any child between the ages of seven and sixteen years"

to send such child to the public schools during the entire school year. The difficult question is to determine the residence of the child. If the reformatory institutions in question give the custody and control of these boys to Judge Willis Brown, it would seem that the place where he maintains a residence would be their residence. The fact that Judge Brown may place these boys within the charge of his brother in Charlevoix county would not necessarily change their residence. Judge Willis Brown would probably be looked upon as their legal guardian and if he is a non-resident of this State but supports the boys in Charlevoix county, he could probably be required to pay their tuition. If Judge Brown is a taxpayer in the school district in question it would be the duty of the district board to admit the children and Judge Brown would be liable for the difference between the amount of the school tax paid and the amount of the tuition. See Section 65 of the pamphlet of General School Laws, revision of 1909.

There may be facts and circumstances not disclosed in your letter or the enclosed correspondence which might alter this conclusion.

In answer to your second question, would say the school board is not required to admit incorrigibles or those who are persistently making trouble in the schools. There are not enough facts stated to warrant us in giving a definite answer to this question. I would suggest, however, that if any such facts exist as might be inferred from your inquiry, the district board should refer the matter to the prosecuting attorney of the county.

The correspondence is herewith returned.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-k-o-encls.

OFFICES. INCOMPATIBILITY. Office of justice of the peace and member of school board incompatible.

November 30, 1910.

Mr. Alex. Sutherland, Prosecuting Attorney, Muskegon, Michigan:

Dear Sir—I have your communication of November 29th, submitting certain inquiries. You state that a justice of the peace in one of the townships in your county was elected a member of the school board in said township. You ask whether these two offices are so incompatible that one man could not hold them both.

You also state that in another township a vacancy occurred in the office of township treasurer and a party was appointed to fill the vacancy. At the next spring election the same party was chosen as treasurer. You ask, "Does this constitute his statutory two terms, or would he be eligible for an election for another term to succeed himself?"

In reply to your first inquiry would say Section 2343 of the Compiled Laws of 1897 provides that the supervisor, the two justices of the peace whose term of office will soonest expire and the township clerk shall constitute the township board. Section 2343 of the Compiled Laws of 1897 provides that if for any cause there shall not be three of the above officers constituting such board, competent or able to act, one of the remaining justices upon being notified shall meet with the board and shall have the same authority as any other member of the board. The township board may be required to exercise a supervisory control over the acts of the school district officers. This in my opinion, renders the two officers incompatible.

In answer to your second inquiry, would say Section 2353 Compiled Laws of 1897 provides, in part, that:

"No person shall be eligible to the office of township treasurer for more than two years in succession."

It will be observed that the statute does not limit a township treasurer to any number of terms but that he is not eligible to the office for more than two years in succession. It has been held by this department that a county treasurer appointed to fill vacancy for six months and afterwards elected for a term of two years is eligible to election for a period of one year and six months.

Attorney General's Report for 1909 page 61.

It is my opinion that the same conclusion should govern in the case which you present. The present incumbent in the office of township treasurer is eligible to hold the office for a full two years but the period during which he held the office under appointment must be counted in determining the two years.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

DEPOSITORIES OF TOWNSHIP FUNDS. Act 305 Public Acts of 1909 providing for the designation of depositories of township funds authorizes the designation of incorporated state or national banks only as such depositories.

December, 7, 1910.

Mr. B. R. Alward, Cashier, The First State Bank, Camden, Michigan:

Dear Sir—I am in receipt of your letter of December 1st, in which you ask whether or not township treasurers are authorized to deposit township, county and State tax moneys in their hands, in private banks when there is a State bank located in the township.

For reply thereto would say that Act 305, Public Acts of 1909, provides: "That the township board of any township may provide by resolution for the depositing of any and all moneys coming into the hands of the treasurer of said township, and said treasurer shall deposit said moneys in such bank, banks or depositories within the county in which said township is located, as said township board may direct, subject to the provisions of this act." Another provision of this act requires "such bank or banks" designated as depositories to give a good and sufficient bond for the safe-keeping and payment of the money deposited. It is also made the duty of the treasurer to see that a sum in excess of the amount of this bond is not deposited "in such bank or banks." It is also provided that when a depository is designated and funds are deposited therein as directed, the treasurer of the township and his bondsmen shall be relieved of any liability occasioned by the failure of the "bank or banks of deposit" and the sureties of "such bank or banks."

Construing these provisions of the act together, we are of the opinion that it was intended that only banks should be designated as depositories of money in the hands of the treasurer of the township and we are also of the opinion that when the statute refers to a bank or banks, that it means only incorporated State or national banks. If, therefore, the township board sees fit to designate a depository or depositories of township funds, it can only designate as such depository a State or national bank. The township board is not, however, required to act under this statute. It may or may not do so in its discretion. If it does not do so the township treasurer has control of the funds and with the sureties upon his bond is liable therefor as an insurer. He may deposit the money in a private bank where the township board has not designated a depository, but in that event he does so at his peril and he and his bondsmen would be liable for any loss that might occur.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-m-o.

DEPOSITORIES OF COUNTY FUNDS. Act 99 Public Acts of 1909, is mandatory to the extent that it requires the board of supervisors to act upon bids but does not impose upon the board the mandatory duty to designate any bank or banks as depositories.

The provision as to the time within which notices may be sent out by the county clerk is directory and if bids are solicited after the time fixed in the statute and a bank is designated as depository the designation would be legal.

December 7, 1910.

Mr. J. P. Higgins, Supervisor, Dowagiac, Michigan:

Dear Sir—I am in receipt of your letter of December 2nd, in which you ask whether or not Act 99, Public Acts of 1909, with reference to the designation by boards of supervisors of depositories of county money, is mandatory and if the statute is mandatory, and the board neglected to designate such depositories at the October session, whether or not the board would have authority to do so at its January session.

For reply thereto would say that Section 1 of the Act provides that it shall be the duty of the county treasurer to deposit all moneys belonging to the county in such bank or banks as may be designated by the board of supervisors, or the board of county auditors. Section 2 of the Act, provides it shall be the duty of the county clerk, at least thirty days prior to the annual session of the board in the year 1909, and not later than the first day of October in the year thereafter that a general election occurs, to send notices to the several banks in the county, soliciting sealed bids for the deposit of county funds. This section contains also this provision: "Such board may for any reason by it deemed sufficient, reject any and all bids."

It will be observed from these provisions of the statute that, while it is the duty of the clerk to send notices to the several banks soliciting bids and the duty of the board to act upon the same, yet the board has authority to reject any and all bids made. The statute, therefore, is mandatory so far as it requires the board to act upon bids, but it does not impose upon the board the mandatory duty to designate any bank or banks as depositories.

If the county clerk did not solicit bids at the time specified in section 2, I know of no reason why this might not be done by direction of the board prior to the January session. The provision as to the time within which the notices may be sent out would probably be construed as directory only and if bids were solicited after the time fixed in the statute, and the board thereafter designated a bank or banks as depositories, the designation would be legal.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

La-m-o.

DEPOSITORIES OF COUNTY FUNDS. Private banks cannot be designated as depositories of county funds under Act No. 99, Public Acts of 1909.

December 7, 1910.

Hon. Henry M. Zimmermann, Commissioner of Banking, Capitol, Lansing:

Dear Sir—In response to your request for an opinion upon the question of whether or not private banks, so-called, may be designated as depositories of county funds, under the provisions of Act 99, Public Acts of 1909, I desire to say that the act in its title and provisions refers to the designation of "a bank or banks" as depositories without specifying whether private or incorporated banks were intended.

I am of the opinion that the statute should not be construed to include private banks. Generally, when reference is made to a bank this means an incorporated bank and not a private bank. For example, when a note is made payable at any bank in a city, this is held to mean an institution incorporated for banking purposes and does not include a private bank.

Way vs. Butterworth, 106 Mass. 75;

Way vs. Butterworth, 108 Mass. 509.

The legislature has passed a law providing for the incorporation and organization of banks and making them subject to the State supervision. Under that law, as under the federal law providing for the organization of national banks, the stockholders are liable in double the amount of the stock held by them. It seems to me that when reference is made in the statute to a bank, it means an incorporated bank organized under the State or national banking laws. A private banker, so-called, conducts his business under chapter 133 of the Compiled Laws of 1897, the same being an act relative to brokers and exchange dealers. The law prohibits the private banker from advertising or putting up any sign tending to convey the impression that the place of business is an organized bank. If he advertises, he must use his individual name and may add thereto "bank" "banking office" or "exchange office." I do not think the place of business of one conducting a private bank is a bank within the meaning of Act 99, Public Acts of 1909.

A somewhat similar question was before the court in the case of the City of DuQuoin vs. Kelly 176 Ill. 218. An ordinance was passed by the city requiring the treasurer to keep the city funds in a regularly organized bank. It was held that the ordinance contemplated a bank organized under the State or national banking law and not a private bank owned by an individual. The court said:

"We are of the opinion that the term 'regularly organized bank,' in the City and Village Act, means a bank organized either under the State law or the act of congress, and that it was not intended by the legislature that a city officer who has given bond for the safe keeping of the funds in his hands should be required to deposit them in a private bank. There would seem to be no more reason for that than there would be for turning the funds over to a private individual. It is

true, provision is made that such banker or bankers shall give bond; but we do not think this alters the case."

I believe as was said by the court in this case that there is no more authority for depositing the public funds in a private bank than there is for loaning them out to an individual, and the fact that security is required to be given makes no difference.

I am of the opinion, therefore, that the board of supervisors cannot lawfully designate a private bank as a depository of county funds, under the provisions of Act 99, Public Acts of 1909.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-m-o.

JUDGES OF PROBATE. The changes in salaries of Judges of Probate affected by change in population of counties in which they reside, became effective April 15, 1910, that being the date of taking the federal census.

December 7, 1910.

Hon. D. Healy Clark, Judge of Probate, Caro, Michigan:

Dear Sir—Under date of September 14, 1910, the Deputy Attorney General advised you that changes in salaries of Probate Judges affected by changes in population, as shown by the census of 1910, should take effect August 29, 1910.

My attention has been challenged to the opinion of Honorable Charles A. Blair, Attorney General, under date of August 30, 1904, a copy of which I enclose you. After examining the opinion of Attorney General Blair and giving the matter full consideration, I am satisfied that the law is correctly stated in his opinion of that date.

The federal law having prescribed that the census should be taken as of date April 15, 1910, I am of the opinion that changes in salaries of Probate Judges, by reason of changes in population of counties would become effective as of that date.

Yours truly,

FRANZ C. KUHN,

Attorney General.

C-m-o.

Jackson, Mich., August 30, 1904.

HON. DAVID S. FRACKELTON,
Judge of Probate, Flint, Michigan.

Dear Sir:—In reply to your letter of recent date requesting my opinion as to whether the salaries of probate judges under Act 119 of the Public Acts of 1903 are to be computed under the State census of 1904 from the first day of June or from the date of the publication of the result of the census in August, I respectfully submit my opinion, as follows:

Act 240 of the Public Acts of 1901, providing for the taking of the census for the year 1904 and once every ten years thereafter, provides in section 5, that "the enumerators shall take the census and statistics required by this act as of date June 1, 1904. They shall commence the enumeration on the first day of June, 1904, and each enumerator shall prosecute the canvass of his district from that date forward on each week day without intermission except for sickness or other urgent cause; and any unnecessary cessation of his work shall be sufficient

cause for his removal and the appointment of another person in his place. It shall be the duty of each enumerator to complete the enumeration of his district on or before the first day of July, 1904."

It is further provided in section 12 of the act that, "The Secretary of State shall condense, tabulate and arrange in proper form for publication the census and statistics of this State taken in pursuance of this act and when so condensed, tabulated and arranged, he shall cause the same to be printed and bound."

It seems clear to me by the express language of the act as quoted from section 5 that it was the intent of the legislature that the census when completed should contain an enumeration of those who are inhabitants of the State on the first day of June, 1904. Since the enumerators are required to complete the enumeration of their several districts on or before the first day of July and they are required by section 6 to forward within ten days after the completion of the enumeration the original schedules duly certified to the Secretary of State, who will then commence the work of condensing, tabulation and arrangement, it is manifest that such tabulation, condensation and arrangement would be of the results ascertained from the enumeration made by the enumerators "as of date June 1, 1904."

Section 1 of Act 119 of Public Acts of 1903 relative to the salaries of judges of probate provides: "The amount of such salary to be paid to the judge of probate of the several counties shall be based upon and determined by the population of their respective counties as shown by each succeeding national or state census."

Inasmuch as the population of the several counties is shown by the State census as of date June 1, 1904, it necessarily follows that the salaries are to be computed from that date.

Yours truly,
CHAS. A. BLAIR,
Attorney General.

COMMISSIONER OF SCHOOLS. A student who enters a normal school receiving advance standing and completing a three or four year course in less than three years if otherwise qualified, is eligible to the office of county commissioner of schools.

December 21, 1910.

Mr. A. E. Sterne, County Commissioner of Schools, Ishpeming, Michigan:

Dear Sir—It appears that some confusion has arisen as to the interpretation to be placed upon our letter to you of December 7th, relative to the qualifications of county school commissioners.

In explanation of the ruling made in that opinion, we desire to add that the department of public instruction has advised us that all of the normal schools of this State offer a course of three years or more, which entitle the student upon completion to a life certificate. We also understand that many students, by reason of credits obtained for high school or other work, complete those courses in two years and that such students are sometimes called students of the two years course.

It is our opinion that students who enter and receive advance standings and for that reason are able to complete the work in less than three or four years, as the case may be, but who receive the same diploma or certificate upon the completion of their course as the regular three or four year students, would be eligible to the office of county commissioner of schools, if otherwise qualified, in the same manner as students who have taken the entire course.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

STATE. LIABILITY OF. The State is not liable to a contractor in the Michigan State Prison for expenses incurred in repairing machinery maliciously damaged by an inmate of the prison employed in the shop of the contractor.

December 21, 1910.

Mr. George R. Stone, Acting Warden, Michigan State Prison, Jackson, Michigan:

Dear Sir—I am in receipt of your letters of December 10th and 16th, wherein you state that at the last meeting of the Board of Control, a bill amounting to \$62.82, was presented for payment by one of the contractors in the prison, the same representing an expense incurred for repairing machinery maliciously damaged by an inmate employed in the shirt shop of A. C. Tawse & Co. The opinion of this department is requested upon the question of whether or not this expense represents a lawful charge against the State.

For reply thereto would say that the contract between this company and the warden of the prison contains no provision making the State liable for damages of this character to the contractor. The warden does agree by the terms of the contract to keep the convicts employed on the contract under good discipline at the expense of the State. It appears from your communications that the damage to these machines was done by a convict who broke the arm above the table upon three power sewing machines, using a piece of one-inch shafting about thirty inches in length for that purpose. It is represented in your letter that the usual and customary discipline was maintained in the shop at the time the damage was done and that it was a physical impossibility for the keepers in the shop to have prevented the convict from damaging the machines.

Under the circumstances, it is our opinion that the State is not liable to the contractor for the expense of repairing the damage done by this convict.

A similar question was before the court in the case of *Austin vs. Foster* 9 Pick. 341. This was an action in assumpsit to recover for the labor of certain convicts in the State prison. The convicts were employed by the defendant in a shop within the walls of the prison as cabinet makers. It was shown that cabinet work upon which the convicts had labored for defendant of greater value than the amount claimed for their services was burned up by a fire set to the shop by some of the convicts in the prison who had the liberty of the yard upon a Sunday. It did not appear whether any of the convicts employed by the defendant participated in the criminal act but it was shown that there was no negligence on the part of the officers of the prison in guarding the convicts; the court said:

"This defense therefore must be tested by the question whether the facts reported would support an action against the warden, or would give a reasonable demand against the Commonwealth, provided it were liable to an action, for the acts of the convicts which occasioned the destruction of the property. And we think it clear, that no such cause is made out by the facts relied on in the defense. It does not appear that

the work was imperfectly done, or that there was any unskillfulness in the convicts hired by the defendant. The loss was occasioned by a separate independent act of wanton and malignant mischief, not in the course of their employment but during a season of relaxation from labor.

The rule of law, after considerable vacillation, has been settled in the case of *McManus vs. Cricket*, that where injury done by a servant, results from a wanton, malicious act, not in the course of his duty, the matter is not answerable. So that if the fire had been set by the very convicts who were employed by the defendant neither the warden nor the Commonwealth would be responsible. And this takes away all ground of defense, unless in virtue of the contract and the peculiar relation which the convicts in the State prison bear to the commonwealth, there is an implied undertaking to insure against incendiary attempts and other destructive practices of the convicts; which we think cannot be pretended.

Undoubtedly, if there were any negligence, or unusual relaxation of discipline, which gave the opportunity to do the mischief, the commonwealth would be bound in equity to repair the loss; but even this would not be a good defense to a suit upon the contract; certainly not, unless the men hired by the defendant were the authors or instruments. But it is found in this case, that there was no negligence on the part of the officers, the regulations of the prison having been duly enforced. It was a case of lawless violence, for which no redress can be had except by the application of mercy by the government."

I am of the opinion that this case is controlling in the case under consideration and that the State is not liable to the contractor for this expense.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-m-o.

REGISTRATION. A woman must present her name personally to the board of registration in order to be registered under Act 206 Public Acts of 1909.

December 21, 1910.

Mr. V. Reynolds, Village Clerk, Cassopolis, Michigan:

Dear Sir:—Your letter of recent date received. Therein you inquire whether the supervisor, township clerk or township treasurer, comprising the registration board, may not accept the name of a woman for registration and present such name to the board of registration at its next meeting under the provisions of Section 3546 of the Compiled Laws of 1897.

In reply would call your attention to section 2 of Act 206 of the public Acts of 1909, which reads, in part, as follows:

"It shall be the duty of every board of registration, upon such days as board of registration are required to be in session, to register the names of all women who will be entitled to vote upon any question involving the direct expenditure of public money or the issue of bonds

at any subsequent election. No woman shall be registered unless she makes personal application to the board of registration."

As a matter of law, a board of registration has no existence except when it is in session. Therefore, since the act specifically provides that in order to be registered a woman must make personal application to the registration board, we are of the opinion that personal application to either the supervisor, township treasurer or township clerk, would not be personal application to the board as required in said Act 206, authorizing a woman to vote in certain cases. We believe, therefore, that a woman can register only by personally applying to the board of registration when said board is in session.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

SCHOOL LAW. TUITION. Under Act 65 Public Acts of 1909, a school district is not required to pay high school tuition of a non-resident pupil who has removed from the district subsequent to the voting of an assessment to pay such tax.

December 21, 1910.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol Lansing:

Dear Sir—Your letter of recent date received. Therein you ask our construction of Act 65 of the Public Acts of 1909, entitled:

"An Act to provide for the payment of tuition in and transportation to another district, of children who have completed the eighth grade in any school district, and to repeal Act 190 of the Public Acts of 1903, and all other acts and parts of acts in any wise contravening the provisions of this act."

In particular you wish to know whether under this act a school district can be held for the tuition of a pupil who lived in said district when the tax provided for in this act was voted and spread on the assessment rolls, but who since moved out of such district.

In our opinion the school district voting the tax which was intended to defray the expenses of resident pupils attending high schools in other districts according to the provisions of this act cannot be held for the tuition of such pupil when such pupil shall have moved from such district prior to the opening of the school term for which the tax was voted. Neither can the district be held for the balance of said tuition when such pupil shall have lost residence in such district during the progress of such school term. Act No. 65 provides that such tuition shall be paid by the treasurer of the school district where the pupil *resides* to the treasurer of the district where the high school attended is located. We believe that the statute contemplates that the residence of the pupil shall be determined by reference to the time when payment of tuition is due and not to the time when such tuition is voted and assessed. Therefore, if the pupil is not an actual resident of the district when such tuition becomes due, we do not believe that the district treasurer labors under any obligation to pay such tuition. The

same reasoning would hold true regarding any part or balance of said tuition.

Section 1, Chapter 96 of the New Hampshire Laws of 1901, reads as follows:

"Any town not maintaining a high school or a school of corresponding grade, shall pay for the tuition of any child who with parents or guardian resides in said town and who attends a high school or academy in the same or another town or a city in this State and the parent or guardian of such child shall notify the school board of the district in which he resides of the high school or academy which he has determined to attend."

Section 5, Chapter 2 of the Public Statutes of New Hampshire provides:

"The word 'town' shall extend and be applied to any place incorporated, or whose inhabitants are required to pay any tax and shall mean that city, town, ward or place in which the subject matter referred to is situate, or in which the persons referred to are resident, unless from the context a different intention is manifest."

Therefore, "town," as used in section 1 chapter 96 of the New Hampshire Laws of 1901, corresponds to our school district. The principle underlying section 1, chapter 96 of the New Hampshire Laws of 1901 is similar to the principle underlying Act 65 of Michigan Public Acts of 1909.

Lisbon School District No. 1 vs. Landaff Town School District (New Hampshire) 74 Atl. 186, is a case arising under section 1, chapter 96 of the New Hampshire Laws of 1901. The court held in that case that under the provisions of the above law, a school district maintaining no high school is not liable for the tuition of a child unless the child has its actual habitation in such district and attends high school in no other district.

We are inclined to believe that the interpretation of the Michigan statute would be similar to the interpretation given the New Hampshire statute by the New Hampshire Supreme Court in the above case.

Therefore, it is our opinion that under Act 65 of the Public Acts of 1909 there is no duty resting upon a school district to pay the high school tuition of a non-resident pupil although said pupil was a resident at the time of the voting an assessment of said tax and applied for said tuition under the provisions of this act.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-m-o.

PRIMARY ELECTION LAW. ENROLLMENT. DELEGATES. Primary election law does not provide for enrollment prior to March primary.

Delegates elected to county convention during the fall of 1910 do not constitute delegates to county convention held prior to spring election, 1911.

December 21, 1910.

Mr. Clark Russell, Box No. 165, Lansing, Michigan:

Dear Sir—I have considered your oral inquiries, submitted under the general primary election law, which are as follows:

1. Is it necessary to have an enrollment prior to the March primary?
2. Will the delegates selected at the September primary to the county convention, held prior to the November election, constitute the delegates to the County Convention, held prior to the April election, 1911?

In reply to the first inquiry would say Section 4 of Act 281 of the Public Acts of 1909—the General Primary Election Act—designates the first Monday of April, preceding the September primary election, as enrollment day. The same section makes provision for enrolling voters during the spring of 1910, which can have no application to the question presented. I am unable to find any provision in the primary election law designating any day as enrollment day, other than as prescribed in said section 4. Section 10 of the primary election act, confers upon the board of primary election inspectors authority to enroll a qualified elector in certain designated cases. The authority for the enrollment of voters must be found in the primary election act. In the absence of anything therein requiring the proper officials to enroll voters prior to the March primary, I am of opinion that an enrollment cannot be held.

In reply to your second inquiry, would say Section 18 of the General Primary Election Act, requires the election of delegates to “the county convention thereafter to be held by such political party within said county in that year,” etc. A similar provision is found in Section 21 of the act. Those duties imposed upon the State Central Committee, by the primary election act, relate exclusively to the November election. There is nothing in the general primary election act which would indicate that it was the intent of the legislature to have the delegates elected at the September primary to a county convention constitute the delegates to the county convention, called prior to the spring election of 1911. Accordingly, it will be necessary to have the delegates to the county convention, called prior to the spring election 1911, selected under the caucus or convention system.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

ORCHARDS AND NURSERIES. REGULATIONS CONCERNING THE SALE OF INSECTICIDES AND FUNGICIDES. Manufacturers of spraying substances may be required to set forth in the statement provided for by the act a fixed percentage which they will guarantee; a double percentage cannot be stated.

If the packages of such spraying substances sold or offered for sale bear upon the label the statement required by law, the placing of other labels upon the package is not unlawful.

The director of the Michigan Agricultural Station has no authority to withhold his approval of a package containing the statement required by law because there are other labels upon the package misrepresenting the strength of the solution to be used.

December 22, 1910.

Mr. L. R. Taft, State Inspector, Orchards and Nurseries, East Lansing, Michigan:

Dear Sir—I am in receipt of your letter of November 28th, submitting for an opinion certain questions arising under the provisions of Act 163, Public Acts of 1909, the same being "An act concerning the sale within this State of certain substances used in spraying or fumigating fruit trees, as insecticides or fungicides or for other purposes."

In this connection you state:

"The manufacturers have as a rule willingly complied with the requirements of the law, but at the present time one Michigan firm manufacturing lime-sulphur solution, which is coming into general use as a spraying solution, has made application for a permit, but the statement made and the label submitted do not seem to me to comply with the requirements, and are likely to confuse the fruit grower who uses it, both as to the real value of the article and the strength he should use.

With one exception, which is the firm referred to above, some definite percentage has been given for the amounts of sulphur and lime in solution. This firm last spring filed a statement and label with the percentage of sulphur as 20 to 24 per cent and this was accepted and a permit granted. Late in the summer I found that they were using a label with the percentage 20 to 27 per cent. I called them to account for using a label which had not been accepted and a new label and statement with 20 to 27 per cent as the amount of sulphur has been submitted. I have refused to recommend a permit until they guarantee some definite amount of sulphur in solution, but they refuse it claiming that the law does not specify any single standard and that I have no right to construe it in that way.

So far as the analysis of this brand show, it runs from 22 to 24 per cent, but if above 20 per cent nothing can be said. There is no difficulty in keeping the percentage within two per cent and in up-to-date factories within one per cent. This makes it possible to guarantee some definite amount below which the percentage should not drop. As the value of the solution depends absolutely upon the amount of sulphur in solution as lime-sulphide, it seems to me that this is very important, especially as the label submitted permits the agents of this company to

lead the average farmer to believe that he is getting a solution which contains 27 per cent while this is never reached and it is probably not over 24 per cent, and only 20 per cent is guaranteed. It also might lead to serious losses as a dilution that would be strong enough with 27 per cent of sulphur might be too weak (if it only contains 20 per cent) to kill the scale, which would result in the loss of trees and the spread of the insect.

I would also say that the label submitted bears the words, "This is the strongest solution that can be made." Really it is about the weakest, running in most cases from 2 to 3 per cent lower than the others, nearly all of which gave a flat guarantee of 25 and even 25½ per cent.

The label also recommends its dilution with 11 parts of water for the San Jose scale. Experiments show that to be effectual against this insect, even when the solution contains 24 per cent of sulphur in solution and the dilution should not be more than 8 parts of water to one of the solution.

I think I have explained the matter fully and would like your opinion on the following points:

1. Can the manufacturers be required to fix upon some one percentage which they will guarantee? If not, what would prevent their making it say 15 to 30 per cent?

2. If they are allowed a double percentage, can they be required to make it within a reasonable limit, say a range of 2 per cent?

3. Should they be allowed, on a label approved by the Experiment Station, to state that it is the strongest solution that can be made, especially if it runs as a rule 15 per cent weaker than most other brands and the guarantee of the others is more than 25 per cent stronger. They also state that they 'have complied with the law in every respect,' when in fact the label and statement have not been accepted, although the former has been used for some months.

4. Should a label be approved which may lead to losses if its recommendation as to the strength be followed, the authorities agreeing that 1 to 8 of 25 per cent solution being necessary? I would say that the National law relating to insecticides entering into inter-state commerce makes it a misdemeanor if the label bears any statement which is false or misleading."

For reply thereto would say that Section 1 of the Act defines what shall be included within the term "spraying substances." Section 2 of the Act reads as follows:

"From and after the taking effect of this act it shall be the duty of each and every manufacturer of spraying substances as defined in section 1, manufactured within this State, and of each and every dealer selling such spraying substances in original packages manufactured without this State, before such spraying substance is offered or exposed for sale or sold, to submit to the director of the Michigan agricultural station of East Lansing, a written or printed statement setting forth: First, the brand of such spraying substances to be sold, the number of pounds contained in each package in which it is put upon the market for sale, the name or names of the manufacturers and the place of manufacturing the same; second, the statement shall set forth so near as may be the percentages and chemical combinations of all essential substances or ingredients of such spraying substances contained in said commodities;

third, if such preparation shall contain arsenic, free or in combination, such statement shall give the percentage of arsenious oxide or its equivalent, soluble or insoluble in distilled water. The statement so furnished shall be considered as constituting a guaranty to the purchaser of the contents of every package of such spraying substances."

Section 5 provides:

"Every purchaser of spraying substances in original packages, which are manufactured without this State, who intends to sell the same or expose the same for sale, and every manufacturer of spraying substances within this State, shall, after filing the statement above provided for, receive from the said director of the Michigan agricultural station, a certificate stating that such dealer or manufacturer has complied with the foregoing statement, which certificate shall be furnished without any charge therefor; such certificate when furnished shall authorize the party receiving the same to deal within this State in spraying substances. Any person who fails to file the statement aforesaid shall not be entitled to such certificate and shall not be entitled to deal in such articles or commodities within this State: Provided, That nothing in this section shall be construed as applying to retail dealers who are selling the goods manufactured by any person or persons holding the certificate herein provided for, from the said director of the Michigan agricultural station."

Answering the first question asked would say that it is my opinion that the manufacturers can be required to set forth in the statement a fixed percentage which they will guarantee. The law requires that the statement shall set forth "so near as may be the percentages," etc. If this permits the statement of a double percentage, there is nothing to prevent the manufacturer from making the minimum and maximum whatever he may deem advisable and the purpose of the law would be practically nullified. I am of the opinion, therefore, that it is contemplated that the manufacturer shall fix a definite percentage in the statement made. This also disposes of the second question submitted.

For answer to the third question would say that while the act in question requires that each and every package of spraying substances sold or offered for sale within the State shall bear a label upon which shall be a statement showing all the facts as set forth in the statement filed with the director of the Michigan agricultural station, the act does not in express terms prohibit the manufacturer from placing upon the package other statements or representations concerning his product. The act provides that the manufacturer, who complies with the law and makes a proper statement, shall, after filing such statement received from the director of the Michigan agricultural station, a certificate which authorizes the persons receiving the same to deal in spraying substances within this State. The authority of the director of the Michigan agricultural station as applied to the label upon packages in which spraying substances are sold is limited to the supervision of the particular statement and label referred to in the act. Inasmuch as the law does not prohibit other labels upon packages in which spraying substances are sold and the director of the Michigan agricultural station is by the terms of the act given authority only as regards the statement therein referred to, I am of the opinion that if the statement and label as prescribed by the terms of the act are complied with, there is nothing

in this act to prevent the manufacturer or dealer from placing upon packages of spraying substances, other labels and statements in addition to the label and statement required by the provisions of this act. Such statements and labels should, however, be separate from the statement and label provided for under the provisions of the act of 1909.

What is said in answer to the third question also applies to the fourth question submitted and I know of no authority lodged in the director of the Michigan agricultural station, by the terms of this act, to withhold his approval of a package containing the proper statement and label under the act of 1909, because there are other labels or statements upon the package misrepresenting the strength of the solution to be used.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

La-m-o.

INSURANCE LAW. A policy fee is a part of the insurance premium and should be reported to the Commissioner of Insurance by foreign companies for taxation.

December 22, 1910.

Hon. M. O. Rowland, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—We acknowledge receipt of your inquiry as to whether "policy fees" charged by local agents should be considered part of the premium on fire insurance policies and reported to the insurance commissioner by foreign companies for taxation, under the provisions of Section 208, Insurance pamphlet of 1909, Section 7257 Compiled Laws, as amended by Act 164, Public Acts of 1903.

In reply thereto will say that a "policy fee," so-called, is a fixed amount, usually \$1.00, added to the amount which the insured would pay for his policy under the company's regular tariff. The practice has prevailed among some agents collecting this fee, to endorse it upon the policy as such and not as a part of the regular premium; many others make no mention of it either in the policy or the daily reports of the company. It has been the practice of companies to allow the agent to collect and retain this fee in addition to the regular commission. The section, above cited, requires foreign insurance companies to file a sworn statement of the number of fire and marine policies "and the gross amount of premiums received or secured thereon during the year then terminated; and shall pay into the hands of the State Treasurer a specific tax of three per cent on the gross amount of premiums received in money or securities during the said year, and in ascertaining the gross amount of all premiums received or secured, the return premiums of cancelled policies shall be deducted and shall not be included in the term 'gross amount of premiums.'"

The word "premium" is defined as "the consideration for a contract of insurance." (Bouv. Law Dict.) (Hill vs. Farmers Mutual Fire Insurance Company, 129 Mich. 141, 144.) In other words, the premium is the amount which the insured pays and it can make no difference whether it is paid in the form of a policy fee or otherwise. Whatever the

insured pays for his insurance must be reported to the commissioner as premiums and three per cent tax thereon paid to the State. The State is not concerned if the companies choose to permit their local agents to collect and retain the policy fee in addition to their regular commissions, but the companies must require the agents to report these policy fees and in turn must include them in their statements to the insurance commissioner as a part of the premiums collected.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

PLATS. CEMETERIES. A cemetery plat should not be filed in the office of the Auditor General under the provisions of the Plat Law, Section 3372 et seq., C. L., as amended by Act 114 of the P. A. of 1909.

December 22, 1910.

Mr. D. C. Crawford, County Surveyor, Ionia, Michigan:

Dear Sir—We have considered your letter of December 9th, relative to the recording of cemetery plats in the office of the Auditor General.

An examination of the plat law, Sections 3372 et seq., Compiled Laws, as amended by Act 114, Public Acts of 1909, will certainly make it clear to you that the general plat law was not intended for the purpose of providing a method for recording cemetery plats. In section 1, it is provided, that "whenever any town, township or subdivision thereof, city, village or addition thereto, shall be laid out, or shall be altered or vacated, as herein provided within this State" a plat shall be made. It is required to be approved by the township board, city council or village council, as the case may be. It is required to set forth the streets, alleys, and public grounds.

In Section 3376, provision is made for the altering or vacating of the plat by Special court proceedings. On the other hand, special provision is made in chapter 227, compiled laws of 1897, and Section 8362 et seq., for the organization of burial ground corporations and special provision made for the platting thereof, and for keeping a record of such plat and of the lots disposed of. In view of the fact, therefore, that provision is made by statute for the platting of cemeteries, under these statutes, and for the vacation thereof, and the fact that the general plat law makes no mention of cemeteries, but is limited in its terms to towns, townships or subdivisions thereof, cities, villages or additions thereto, we are clearly of the opinion that cemetery plats are not entitled to record thereunder.

We note that you state that plats of two sections of this cemetery have already been filed here. If this is true, they were certainly received under a mistaken notion as to the scope of the plat statute. Certainly, the practice of filing plats of this character has never been generally recognized and I am advised by the Auditor General's department that there are only a very few of these plats filed in their office, all of which were filed many years ago.

A reference to chapter 227 of the Compiled Laws of 1897, will indi-

cate the proper method for the organization of a private cemetery, the platting thereof and the sale of cemetery lots.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

JUVENILE COURT LAW. STATE PUBLIC SCHOOL. JUDGE OF PROBATE. The re-enactment of section 5 of the State Public School Act as amended by Act 47 of the P. A. of 1909, does not take away the discretion of the Judge of Probate under section seven of the Juvenile Court law to commit children to approved private institutions.

December 22, 1910.

Hon. George C. Bentley, Judge of Probate, Houghton, Michigan :

Dear Sir—We are in receipt of your letter of December 7th, in which you state that the Good Will Farm and Home Finding Association, located in Houghton County, is incorporated and approved by the Board of Corrections and Charities. You ask whether this home is entitled to receive dependent and neglected children on the same conditions as the State Public School at Coldwater.

In reply thereto will say that Section 7 of Act 6, Extra Session of 1907, known as the Juvenile Court Law, authorizes the court to commit dependent and neglected children "to the care of some suitable State institution, subject to the laws and regulations governing such institution, or to the care of some reputable citizen of good moral character, or to the care of some training school, or industrial school, as such provided by law, to the care of some association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, which association shall have been approved by the State Board of Corrections and Charities." This provision, undoubtedly, repeals by implication the provisions of Section 5 of Act 143, Public Acts of 1903, as amended by Act 301, Public Acts of 1907, to the extent that it leaves it discretionary with the probate judge to commit juvenile dependents, who might be admissible to the State public school, either to the State public school or to persons or institutions within the description of section 7, above quoted. Section 5 of Act 143, Public Acts of 1903, was amended by Act 47, Public Acts of 1909. The amendment, however, consisted in a change in the proviso in the middle of the section and did not in any manner change the first sentence of section 5. The rule, relative to the effect of the amendment is well stated in Section 237 of Sutherland on Statutory Construction, in the following language:

"The constitutional provision requiring amendments to be made by setting out the whole section as amended was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal re-enactment should have the effect of disturbing the whole body of statutes in pari materia which had been passed since the first enactment. There

must be something in the nature of the new legislation to show such an intent with reasonable clearness before an implied repeal can be recognized. 'By observing the constitutional form of amending a section of a statute' says the court in one case 'the legislature does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. Any other rule of construction would surely introduce unexpected results and work great inconvenience.'"

Applying this rule of construction, it is clear that the re-enactment of Section 5 of the State Public School Law, as amended by Act 47, Public Acts of 1909, would not take away the discretion given to the judge of probate, under section 7 of the Juvenile Court Law, and for this reason we are of the opinion that the judge of probate has the authority to commit dependent and neglected children to the care of persons and institutions, coming within the description in Section 7 of the Juvenile Court Law. It must not be understood, of course, that these private institutions are entitled to receive anything from the State for caring for children committed to their custody.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

CONTEMPT PROCEEDINGS. LIABILITY OF COUNTY FOR EXPENSES IN. The sheriff's fees and board of a prisoner while confined in jail upon an attachment issued in the case of disobedience or refusal to comply with an order of the court would be a lawful charge against the county to be audited and paid by the board of supervisors. The court may include the expense of arrest and detention of the prisoner in the costs.

December 22, 1910.

Mr. Henry G. Reek, Prosecuting Attorney, Ludington, Michigan:

Dear Sir—I am in receipt of your letter of December 9th, in which you ask who is responsible for the sheriff's fees and the board of a prisoner, while confined in jail upon an attachment issued in the case of disobedience or refusal to comply with the order of a court for the payment of alimony.

For reply thereto would say that Act 230, Public Acts of 1899 provides for the punishment as for contempt in courts of record, in case of disobedience or refusal to comply with any order of the court for the payment of alimony, either permanent or temporary, made in any suit for divorce. Section 10902, Compiled Laws of 1897, relating to contempts, provides:

"Upon arresting any defendant, upon an attachment, to answer for any alleged misconduct, the sheriff shall keep such person in his actual custody, and shall bring him personally before the court issuing the attachment, and shall keep and detain him in his custody, until such court shall have made some order in the premises, unless such defendant shall entitle himself to be discharged, as prescribed in the next section."

Section 10910 provides:

"If the court shall adjudge the defendant to have been guilty of the misconduct alleged, and that the misconduct was calculated to or actually did, defeat, impair, impede or prejudice the rights or remedies of any party, in a cause or matter depending in such court, it shall proceed to impose a fine, or to imprison him, or both, as the nature of the case shall require."

Section 10913 provides:

"When the misconduct complained of consists in the omission to perform some act or duty, which is yet in the power of the defendant to perform, he shall be imprisoned only until he shall have performed such act or duty, and paid such fine as shall be imposed, and the costs and expenses of the proceedings."

There is no provision requiring the person procuring the attachment to advance the sheriff's fees and a sufficient amount to cover the expenses of boarding the prisoner until he is brought before the court. Neither is there any provision requiring the person procuring the attachment to pay the expenses of the arrest and detention of the prisoner. The court may include these expenses in the costs, under the provisions of section 10913, above quoted. If the prisoner does not pay the same, or the court does not require payment by the prisoner as a part of the costs, I am of the opinion that all the expenses would be a lawful charge against the county, to be audited and paid by the board of supervisors.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-m-o.

SCHOOLS. LEGAL HOLIDAYS FOR TEACHING. Where Christmas and New Years fall upon Sunday, the following Monday is a legal holiday for schools.

December 22, 1910.

Hon. Luther L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I am in receipt of your communication of the 13th instant, in which you ask if Monday, December 26, 1910, and Monday, January 2, 1911, are legal holidays for schools in the State of Michigan.

In reply thereto would say that Act 246 of the Public Acts of 1909 is the general law defining what day shall be deemed holidays for any purpose. The title of the act, of which Act 246 is an amendatory statute, reads as follows:

"An Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes, in holding courts and relative to the continuance of suits."

This law designates the first day of January, commonly called New Years Day, and the twenty-fifth day of December, commonly called Christmas Day, with other days, as holidays to be treated and considered as the first day of week, commonly called Sunday, for all purposes whatever as regards the presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, bank

checks and promissory notes, and for the holding of courts with certain designated exceptions. Section 2 of said act provides:

"Whenever the first day of January * * * or the twenty-fifth day of December, shall fall upon Sunday, the next Monday following shall be deemed a public holiday for any or all of the purposes aforesaid."

We have no statutes which expressly designate any certain days of the year as public holidays for all purposes, or as public holidays generally except the act to which I have called your attention and Act 258 of the Public Acts of 1909, designating the twelfth day of October in each year as a public holiday, to be known as Columbus Day and subjecting the same to the rule established by said Act 246.

Section 5395 of the Compiled Laws, the same being section 17 of the Liquor Law, requires all saloons, restaurants, bars, etc., to be closed on all legal holidays and certain other specific days. In the case of *People vs. Thielman*, 115 Mich. 66, the respondent was convicted of keeping a saloon open on Monday, the 5th of July, 1897; the 4th day of July in that year falling upon Sunday and being one of the days designated under the act, above referred to, as a holiday for certain purposes. It was claimed by respondent's council that the words found in section 2, "for all or any purposes aforesaid" were words of limitation upon the act so that a Monday following a legal holiday can be treated as a holiday only for the purposes specified in that act, and that, therefore, such a Monday is not a legal holiday in contemplation of the liquor statute. This contention of respondent's council was overruled and the conviction affirmed. I may add at this point that the general school laws of this State are silent on the questions of holidays.

In the case of *School District vs. Gage*, 39 Mich. 484, it appears that Gage sued for his compensation as teacher in a certain school district and it was claimed by the school district that certain deductions should be made for holidays when there was no school kept open. In disposing of this question, Chief Justice Campbell makes use of the following language, commencing on page 486:

"In regard to deductions for holidays we are of opinion that school management should always conform to those decent usages which recognize the propriety of omitting to hold public exercises on recognized holidays; and that it is not lawful to impose forfeitures or deductions for such proper suspension of labor. Schools should conform to what may fairly be expected of all institutions in civilized communities. All contracts for teaching during periods mentioned must be construed of necessity as subject to such days of vacation, and public policy as well as usage requires that there should be no penalty laid upon such observances."

The holding of the court in the case of *School District vs. Gage* was again upheld in the case of *Halloway vs. School District*, 62 Mich. 56.

From the authorities which I have presented and by reason of the language of the statute, it is clearly my opinion that Monday, December 26, 1910, and Monday, January 2, 1911, are legal holidays to all intents and purposes as fully as though such days were actually the 25th day of December and the 1st day of January. I do not undertake to state that school cannot be held upon the Mondays in question if teachers pursuant to arrangements with the district officers see fit so to do or their contracts expressly provide for so doing. However, it is my

opinion that where their contracts to teach are silent on the subject, a teacher under the general school laws cannot be compelled to teach school on the days in question and that no deduction from their stipulated salary or compensation could be lawfully made by reason of their failure to keep school open on said days.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

M-m-o.

BOARD OF CONTROL. NOTICE OF MEETING. A quorum of the board, including member to whom the statutory notice was not given, may take action with reference to the appointment of a warden. The member appointed on the board to fill vacancy which existed at the time the ten days' notice of the proposed meeting was sent to other members, may vote, on the appointment of the warden.

December 22, 1910.

Hon. Fred M. Warner, Governor, Capitol, Lansing:

Dear Sir—In reply to your request for an opinion concerning the legality of a proposed meeting of the Board of Control of the Michigan State Prison and the selection of a warden thereat, will say that Section 2102, Compiled Laws of 1897, provides in part:

"A majority of the members of the board shall constitute a quorum for the transaction of business, but for a meeting held for the appointment or removal of the warden, and any business relating thereto, at least ten days' notice in writing shall have been given by the president or secretary of the board, stating the object of the meeting."

You state that on the 17th day of December, 1910, a notice was given, in writing, to the members of the Board of Control of the Michigan State Prison, of the meeting of said board for the appointment of a warden of said prison, on the 28th day of December, 1910. At the time said notice was given there was a vacancy on said board, caused by the death of one of its members; that on the 20th day of December, 1910, an appointment was made to fill said vacancy. You inquire if the member of said board, appointed to fill the said vacancy, to whom the required statutory notice had not been given, may, if present, at said meeting of said board, vote upon the question of the appointment of a warden.

In reply will say that I am of the opinion that if a quorum of the members of the board, including the member to whom statutory notice was not given, are present at the proposed meeting the board may take action with reference to the appointment of a warden, and said member, appointed to fill said vacancy, may vote on the question of the appointment of a warden.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

C-m-o.

COUNTY DRAIN COMMISSIONER. Under section 4317 C. L., a supervisor must resign his office before election to the office of County Drain Commissioner otherwise he may not legally qualify.

December 22, 1910.

Mr. Frank L. Blackman, Assistant Prosecuting Attorney, Jackson, Michigan:

Dear Sir—We are in receipt of your letter of December 13th, submitting the inquiry as to whether a person holding the office of supervisor can be elected to and qualify for the office of county drain commissioner without resigning his office of supervisor, under the provisions of section 4317, Compiled Laws of 1897.

In reply thereto will say that the section in question reads as follows:

"No person holding the office of supervisor, highway commissioner or township clerk, *shall be eligible* to the office of county drain commissioner, and any county drain commissioner accepting the office of supervisor, highway commissioner or township clerk, shall thereupon be considered as having vacated the office of county drain commissioner."

We are clearly of the opinion that a supervisor can not qualify for county drain commissioner, under the provisions of the above statute, without resigning his office as supervisor. Where the statute says that a person shall not be eligible the rule is different than in the case of offices which are merely incompatible, so that the acceptance of one constitutes a vacation of the other.

The question whether the word "eligible" as used in section 4317, refers to the time of election or the time of qualification for the office, is one which has never been passed on by the courts of this State. In 29 Cyc. page 1376, it is said:

"Most of the cases hold that the term 'eligible,' as used in a constitution or statute, means capacity to be chosen and that, therefore, the qualifications must exist at the time of election or appointment."

In support of this proposition, California, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, Pennsylvania, Rhode Island and English authorities are cited and to these may be added Alabama, Indiana, Iowa, Kansas, Kentucky and Wisconsin have held that "eligibility" relates to the time of qualification. However, in the case of *Carroll vs. Green*, 148 Ind. 362, it was said:

"The term 'eligible' as applied to candidates for office, means capable of being chosen, the subject of selection or choice; and also implying competency to hold office if chosen."

Numerous definitions of the word "eligible" are found in Words and Phrases, Volume 3, page 2346. An examination of these definitions, together with cases cited in 29 Cyc. page 1376, convinces us that the weight of authority is clearly in favor of holding that the word "eligible," as used in statutes, such as section 4317, refers to the capacity to be elected or chosen to the office. This construction is in accordance with the primary meaning of the word, which is from the Latin "eligere" (to elect). In other words, as one authority has said "eligible" means "electable."

Kirkpatrick vs. Brownfield, 97 Ky. 558; 29 L. R. A. 703; 53 Am. St. Rep. 422.

We are, therefore, of the opinion that under the provisions of section 4317, a person holding the office of supervisor must resign that office before he is elected to the office of county drain commissioner, otherwise he may not legally qualify.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

CORPORATIONS. A corporation in the absence of statute has no authority to guarantee the faithful performance of a contract of one of its employes for the purchase of a house and lot.

December 24, 1910.

Mr. M. D. Wagner, Huron County Savings Bank, Harbor Beach, Michigan:

Dear Sir—I am in receipt of your letter of December 20th, in which you ask whether or not the Huron Milling Company has authority to guarantee the faithful performance of a contract for the purchase of a house and lot, given by a man who is in the employ of the company; also whether or not it is necessary to fill out both of the affidavits upon the back of a form of the chattel mortgage enclosed, in order to comply with the law.

In reply to your first question, I would say that it is exceedingly difficult for me to give you a definite opinion as to the validity of the guaranty made by the corporation without being fully informed as to the situation and the relation of the corporation and the employee, with reference to the contract. However, I may say that the general rule with reference to the guaranty by corporations of the contracts of others is as follows:

“A corporation has no power to enter into a contract of suretyship or guaranty, or otherwise lend its credit to another unless the power is expressly conferred by its charter, or unless such contract is reasonably necessary or is usual in the conduct of its business. Ordinarily, the simple act of becoming the surety or guarantor for the contract or debt of another person, or corporation, is not within the implied powers of the corporation.” (7 Am. En. Enc. of Law 788; 10 Cyc. 1109.)

Upon the statement of the situation as contained in your letter, I should be inclined to the opinion that the corporation had no power to guarantee the faithful performance of this contract.

With reference to the second question asked, I would say that Act 258 of the Public Acts of 1905, as amended by Act 332 of the Public Acts of 1907, provides that the mortgagor or some person for him, having knowledge of the facts, shall before the filing of the mortgage, make and annex thereto an affidavit setting forth that the consideration of said instrument was actual and adequate and that the same was given in good faith for the purposes in such instrument set forth. The first affidavit appearing upon the back of the mortgage blank enclosed is in the form required by these provisions of the law. There is

no provision requiring the execution of an affidavit like the second form appearing upon the back of this mortgage, and the execution of this affidavit is not required in order to comply with the statute.

Yours very truly,

FRANZ C. KUHN,

Attorney General.

La-m-o.

DOG TAX LAW. Right of township treasurer to seize any property for delinquent dog tax or whether dog only can be taken; also how long the payment of the dog license authorizes the owner to keep the dog.

January 4, 1911.

Messrs. Perrine, Woelfle & Co., R. F. D. No. 1, Spring Arbor, Michigan :

Gentlemen—Your letter of December 27th received. Therein you inquire whether a township treasurer can seize any property for delinquent dog tax or whether the dog only can be taken. Also you ask how long the payment of the dog license authorizes the owner to keep the dog.

In reply to your first question, would refer you to Section 3 of Act 48 of the Public Acts of 1901, entitled "An Act to provide for a tax upon dogs and to create a fund for the payment of certain damages for sheep killed or wounded by them in certain cases." Section 3:

"The assessor of every township and ward shall on or before the Tuesday, next following the third Monday in May in each year, make out a duplicate of the lists made by him, as provided in the preceding section and file the same with the township or city clerk of his respective township or city; said taxes as provided for in the preceding section of this act shall be assessed to and collected from such persons as shall be liable for the same in the same manner as other township and city taxes are assessed and collected, and with like power to distrain and sell any property of the owner or owners, keeper or keepers of dogs liable to be taxed."

Thus it would appear that in order to collect the tax the collector has power to sell any property of the owner or keeper of such dog. Section 4 of said act provides, in part, as follows:

"That in each and every case where the collector is unable to collect the tax in the manner above specified, prior to the first day of February in each year, it shall be his duty to provide the sheriff of such county with a list of each and every dog upon which such tax has not been paid and it shall be the duty of the sheriff of such county to levy upon each and every dog upon which such tax has not been paid wherever said dog or dogs may be found and it shall further be his duty to take possession of said dog or dogs and kill or cause the same to be killed."

Relative to your second question, would say that the payment of an annual dog license authorizes the owning and harboring of such dog for one year from and after the date on which such dog license is due and payable.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

PRIMARY ELECTION LAW. SECRETARY OF STATE. CANDIDATES FOR CIRCUIT JUDGE. Nomination petitions of candidates for circuit judge should be filed with the Secretary of State.

January 5, 1911.

Hon. F. O. Martindale, Secretary of State, Capitol:

Dear Sir—In response to your oral inquiry in regard to the duty of a Secretary of State in receiving nomination petitions for candidates for circuit judge would say that Section 15 of the General Primary Election Act provides in part:

"That all duties imposed upon city or county clerks, shall, in the case of judicial districts be performed by the Secretary of State."

It is the duty of city and county clerks to receive nomination petitions in various instances under authority of the general primary election act. It is apparent from the above quoted language that it was the intent of the legislature to require the performance of such duties by the Secretary of State, in the case of nomination petitions of candidates for circuit judge. It is therefore my opinion that it is the duty of all candidates for circuit judge in every judicial district in which the General Primary Election Law is applicable to file nomination petitions with the Secretary of State.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

See Mandell vs. Farrell, 164 Mich. 585.

L-w-o.

CRIMINAL LAW. It is not necessary to incorporate the word "wound" in a complaint or information, under Act 121 of the P. A. of 1903, where the facts show a killing as a result of the shooting.

January 4, 1911.

Mr. M. J. Gue, Prosecuting Attorney, Midland, Michigan:

Dear Sir—I am in receipt of your letter of January 2nd, relative to the information under Act 121 of the Public Acts of 1903. Section 1 of this act provides, "Whoever, while hunting or in the pursuit of game, negligently or carelessly shoots and wounds or kills any human being, shall be punished by imprisonment not exceeding ten years, or by a fine not exceeding \$1,000.00." You inquire, "Would you allege that defendant negligently and carelessly did shoot and wound and kill in one count, or simply allege a negligent shooting and killing?"

According to your statement, the shooting resulted in death in about two hours. It is our view that the statute creates two offenses, the punishment for which is identical. The first, a shooting and wounding which does not result in death; the second, a shooting and killing. In the case which you submit I can see no reason for incorporating the word "wound" in the complaint, warrant and information, as there is apparently no question but that the shooting was the immediate cause

of the death. It would, therefore, seem to us to be better pleading to charge the respondent with negligently and carelessly shooting and killing, etc.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

GAME LAW. County Clerk under Act 654 local acts of 1905 is not entitled to retain the fee of 25 cents authorized by Act 225 Public Acts of 1905 as his fee for issuing a license.

January 10, 1911.

Mr. Clarence M. Browne, Prosecuting Attorney, Saginaw, Michigan:

Dear Sir—Your letter of the 5th inst. received. Therein you ask our opinion as to whether the county clerk of Saginaw county may retain for himself 25 cents of the \$1.50 collected by him for deer licenses.

Section 6 of Act No. 225 of the Public Acts of 1905, entitled.

"An Act to amend Sections 2 and 6 of Act No. 268 of the Public Acts of 1897, approved June 2, 1897, entitled 'An Act to regulate and license the use of fire arms in hunting for and killing deer, protected by the laws of this State and providing a penalty for its violation,' the same being Sections No. 5793 and 5797 of the Compiled Laws of 1897," reads in part as follows:

"Such clerk shall retain for his own use out of the moneys received for each license issued the sum of 25 cents, which shall cover the swearing of the applicant and the affidavit herein referred to, and all other services under this Act, and shall pay the balance to the county treasurer of his county, etc."

Said Act was approved June 16, 1905.

Section 1 of Act No. 654 of the Local Acts of 1905, entitled

"An Act to provide for the compensation and to prescribe the duties of certain officers of the county of Saginaw; to provide for the safe keeping of the moneys of the said county of Saginaw and to repeal all acts inconsistent with the provisions of this Act," reads as follows:

"The treasurer of the county of Saginaw shall receive an annual salary of \$2,500. The clerk of the county of Saginaw shall receive an annual salary of \$2,500. The register of deeds shall receive an annual salary of \$2,500. The prosecuting attorney shall receive an annual salary of \$2,500. The county game warden shall receive an annual salary of \$500. *The officers named shall not be entitled to any compensation other than said salary for the performance and discharge of any duties growing out of their office, or any offices, the duties of which they exercise by virtue thereof.*"

Section 2 reads in part as follows:

"It shall be the duty of the officers named in the foregoing section to collect all fees now provided by law for the performance of the duties growing out of their said offices. * * * * * All moneys so received shall be paid by said clerk to the county treasurer as provided in Section 3 of this Act."

Said local act was approved June 16, 1905.

We are of opinion that the county clerk of Saginaw county is entitled to the salary provided for in Local Act No. 654 of the Local Acts of 1905, and is not entitled to the fee of 25 cents provided for in Act No. 225 of the Public Acts of 1905. It will be perceived by a consideration of Section 5797 of the Compiled Laws of 1897, and Section 6 Act No. 225 of the Public Acts of 1905 that the provisions referring to the retention of 25 cents out of the moneys received for the issuing of licenses, said 25 cents to cover the swearing of the applicant and all other services under the Act, are identical. Therefore, in as far as this provision in Act No. 225 is concerned it is simply a re-enactment of Section 5797 of the Compiled Laws of 1897. We believe said Section 5797 and Section 6 of Act No. 225 in as far as they conflict with Local Act No. 654 of 1905 to have been superseded by said Local Act No. 654.

Section 2 of Act No. 225 of the Public Acts of 1905 provides that a fee of \$1.50 shall be paid to the clerk by the applicant for a hunters' license. Section 2 of the Local Acts of 1905 provides that the county clerk shall collect all fees now provided by law for the performance of duties growing out of his office, and that *all moneys* so received shall be paid by said clerk to the county treasurer.

The case of Board of Auditors of Wayne County vs. Reynolds, 121 Mich. 99, presents a statement of facts somewhat similar to those in question and clearly supports our conclusion in the matter.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-W-o.

PRIMARY ELECTION LAW. REPEAL OF LOCAL ACTS. COUNTY COMMISSIONER OF SCHOOLS AND COUNTY ROAD COMMISSIONER OF MUSKEGON COUNTY. General primary election act repealed all local primary election acts.

County commissioner of schools and county road commissioner of Muskegon county selected under caucus system.

January 10, 1911.

Hon. Elliott D. Prescott, Judge of Probate, Muskegon, Michigan:

Dear Sir—I have your communication of January 4th, in which you state that a county commissioner of schools and county road commissioner is to be elected at your spring election; that these officers have in the past been nominated under a local primary election act. You ask the following questions:

1. Does Act 281 Laws of 1907, repeal our Local Primary Act in the matter of nominations for County Commissioner of Schools and County Road Commissioner?

2. If the local act is repealed how will above named officers be nominated? If by convention when and in what manner will delegates to the convention be chosen?

3. When and in what manner will delegates to the State Convention to be held in Saginaw, March 2, 1911, be chosen?

4. Act No. 341. Local Acts of 1905 provides for the nomination of candidates for Circuit Judges in the 14th Judicial District. The date

of the Primary being the same as under our Local Primary Act, to wit: February 28th, Section 15 of Act 281, Laws of 1907, contains the proviso: "Provided further, That all judicial districts in this State which now nominate by a primary system shall continue to so nominate until said judicial districts shall decide by a vote of the electors not to so nominate." Is Local Act No. 341 repealed by the General Primary Act?

In reply to your various inquiries would say it is my opinion that the General Primary Election Act (Act 281 of the Public Acts of 1909) repealed all local primary election acts. Therefore if candidates for the offices in question are to be selected under authority of any primary election act it must be under the General Primary Election Act. However there is no provision made in the General Primary Election Act for the selection of candidates for any county offices to be voted for at the April election. It will, therefore, be necessary for candidates for these offices to be selected under the caucus or convention system.

The time and place, when and where, a county convention shall be held for the purpose of selecting such candidates rests primarily with the county committee of the various political parties. It is also my understanding that candidates for the office of Circuit Judge, in those judicial districts in which candidates are to be selected under a primary system, are to be selected under authority of the provisions of the General Primary Election Act.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

L-m-o.

POWER OF ATTORNEY. COMMISSIONER OF STATE LAND OFFICE. Power of attorney must be executed in the manner provided by our statutes if same is to be accepted by Commissioner of State Land Office.

January 10, 1911.

Hon. Huntley Russell, Commissioner State Land Office, Capitol:

Dear Sir—I have your communication of December 29, enclosing the Power of Attorney and certain other papers.

You ask for an opinion as to the sufficiency of the acknowledgment of the Power of Attorney. The power of Attorney is signed by Jacob Shook and it was sealed and delivered in the presence of T. G. Smith and Charles W. Angus. Jacob Shook made no acknowledgement. The sworn statement of Thadious G. Smith is attached to the Power of Attorney, in which it is claimed that he saw Jacob Shook sign the Power of Attorney.

A Power of Attorney must be executed in the manner provided by our statutes for the execution and acknowledgment of deeds. See section 8996 of the Compiled Laws of 1897. Our statutes require deeds to be executed in the presence of two witnesses and further require that the persons who execute deeds may acknowledge and execute same before a commissioned Notary Public, etc. See section 8962 of the Compiled Laws of 1897. It is evident that this Power of Attorney was

not executed with the formality which attaches to the execution of a deed.

I think you should not be required to determine whether such an instrument is legally correct, but it becomes the duty of those who wish to secure rights under authority of the Power of Attorney to furnish you with one, in regard to which no objection can be raised. It is my opinion that you should refuse to take any action in regard to this Power of Attorney.

All of the papers which you forwarded to me are herewith returned.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-w-o.

PROSECUTING ATTORNEY. BOARD OF SUPERVISORS. The Board of Supervisors is not authorized to allow additional compensation to the prosecuting attorney for his services in removal proceedings.

January 10, 1911.

Mr. Norman W. Dunan, Attorney at Law, Lake City, Michigan:

Dear Sir—Your letter of recent date received. Therein you state that you have been representing the Board of Supervisors, at their request, in proceedings involving the removal of a Superintendent of the Poor for wilful neglect of duty; also in mandamus and certiorari proceedings growing out of the same matter. You ask if you are entitled to extra compensation or whether your salary covers your services in this regard.

Sections 4576 and 4577 of the Compiled Laws of 1897, read as follows:

"That the Attorney General, Secretary of State, and Secretary of the State Board of Charities be and they are hereby authorized and directed to act with the committee appointed by the association of county superintendents of the poor for that purpose in the preparation of a uniform system of records and accounts for the use of superintendents, overseers, and directors of the poor, and keepers of the poor-houses."

"When the forms for the records and accounts provided for by the preceding section shall have been prepared and perfected, it shall be the duty of the Secretary of State to cause a sufficient number of copies of the same to be printed and bound, to supply each officer entitled to the same, and any of such officers as shall thereafter neglect to keep the records and accounts in the manner so prescribed, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$50.00, which fine shall be paid into the treasury of the county wherein such neglect or failure occurred; *it shall be the duty of the prosecuting attorney of any county, upon being notified of any such neglect or failure to immediately commence suit against the parties offending, and prosecute the same to a final termination.*"

Thus it appears that it is the duty of the prosecuting attorney to prosecute superintendents of the poor for neglecting duty. We believe it is likewise within the scope of said prosecutor's duties to prosecute said superintendents of the poor to the extent of removing them from

office when circumstances warrant and when so requested by the board of supervisors.

Section 2562 of the Compiled Laws of 1897 reads:

"The prosecuting attorneys shall severally receive such compensation for their services, as the board of supervisors of the proper county shall, by an annual salary or otherwise from time to time, order and direct."

Section 3 of Article 16 of the revised constitution of 1908 reads:

"Neither the legislature nor any municipal authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. Salaries of public officers, except circuit judges shall not be increased nor shall the salary of any public officer be decreased after election or appointment."

Assuming that you received a definite salary as prosecuting attorney of Missaukee county we do not believe, under the constitutional provision above quoted, that the Board of Supervisors can lawfully allow you any additional compensation for the services you have named.*

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-w-o.

MICHIGAN RAILROAD COMMISSION. The Commission under the act creating it has no power to order a railroad company to cause the ditches on its right-of-way to be lowered sufficiently to drain a catch basin located upon the right-of-way of the company, the matter being within the jurisdiction of the local authorities.

January 10, 1911.

The Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—I am in receipt of your letter of December 22nd enclosing copy of an order made by the Michigan Railroad Commission, directed to the Lake Shore & Michigan Southern Railway Company and ordering the company to cause the ditches on its right-of-way to be lowered sufficiently to drain a catch basin located upon the right-of-way of the company near Byron Center, and requesting the opinion of this department as to the jurisdiction of the Commission in the premises.

It appears from the papers enclosed that the Warner Drain, so-called; crosses the railroad near Byron Center and that the culvert and ditches in the right-of-way are not sufficiently low to drain a sink-hole or catch basin made by the construction of the railroad, where water collects, and that in its present condition the sink hole or catch basin is a menace to public health.

The present Michigan Railroad Commission was created by Act 300 of the Public Acts of 1909, which is entitled

"An Act to define and regulate common carriers, and the receiving, transportation and delivery of persons and property, to prevent the imposition of unreasonable rates, to prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and prescribe penalties for violations hereof."

[*Note:—Mr. Dunan was prosecuting attorney until December 31, 1910.

The Commission has no powers except those conferred upon it by law. An examination of the provisions of this act discloses that it contains no express provision giving the Commission jurisdiction over the matter of drainage of the right-of-way of a railroad company. The only provisions in the statute relating to the construction of drains across the right-of-way or roadbed of railroads is found in section 16 of chapter 3 of the general drain law, Act 254 of the Public Acts of 1897 as amended, and under the provisions of that law the matter is under the jurisdiction and control of the local authorities.

In view of this express provision of the drain law whereby jurisdiction in the matter of constructing drains is conferred upon the local authorities, and the fact that the Act creating the Michigan Railroad Commission confers no jurisdiction upon the Commission in the premises, I am of the opinion that the Michigan Railroad Commission has no jurisdiction over the matter of constructing drains across the right-of-way or roadbed of railroad companies and that consequently, the Commission had no authority to make the order in question directed to the Lake Shore & Michigan Southern Railway Company.

The papers enclosed with your communication are returned herewith.

Yours very truly,

FRANZ C. KUHN,

Attorney General.

La-m-o.

HOME-RULE LAW. LOCAL OPTION. COMMISSION FORM OF GOVERNMENT. The adoption of commission form of government under home-rule law does not affect local option in the county.

January 11, 1911.

Mr. E. C. Price, Mt. Clemens, Michigan:

Dear Sir—I have your communication of January 7th, in which you submit an inquiry under the so-called “home-rule” law. You state:

“There seems to be an impression abroad in this community that if the city of Mt. Clemens were to adopt the commission form of government there would be no danger from local option sentiment for the saloons of this city, or in other words, some have claimed that in case Mt. Clemens adopts the commission form of government and the county should have an election voting dry at the local option election, such a result would in no way affect the city of Mt. Clemens.”

In reply thereto would say Section 20 of Article 8 of the constitution confers upon the legislature authority to provide by general law for the incorporation of cities. Section 21 of the same article provides that:

“Under such general laws the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and through this regularly constituted authority to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this State.”

It will therefore be observed that in the enactment of ordinances the legislature may confer upon a city the authority to provide for only such as do not contravene the constitution of this State or the general laws.

The local option law when operative in any county becomes so far as such county is concerned a general law of the State and a city would have no right or authority to enact ordinances that would interfere with its operation. The particular inquiry which you submit is, however, relieved from all possible doubt by the language of subdivision D, Section 4 of Act No. 279 of the Public Acts of 1909. This subdivision provides in part that:

"No charter shall permit the sale of such liquor in any county where such sale is prohibited by operation of the general local option law of the State."

Very respectfully,

FRANZ C. KUHN,
Attorney General.

L-w-o.

PSYCHOPATHIC HOSPITAL. INSANE PERSONS. Patients committed to the Psychopathic Hospital should be treated as public patients unless the commitment is accompanied by a bond for support in accordance with the provisions of Act 217 of the P. A. of 1903.

January 11, 1911.

Dr. Albert M. Barrett, Director, State Psychopathic Hospital, Ann Arbor, Michigan:

Dear Sir—We acknowledge receipt of your letter of December 31st, relative to the support of public patients at the Psychopathic Hospital together with the copy of the order for the admission of Henry Rosenberg.

In reply thereto will say that an examination of Act 217 of the Public Acts of 1903, as amended, will indicate to you that persons can be admitted as *private* patients only upon the furnishing of a bond for support. The ability of the patient to pay the expense of maintenance does not authorize the judge of probate to commit the patient as a private patient and if a bond is not furnished no course is open to the judge except to commit as a public patient. The probate court also has authority in the original order of commitment to require partial or entire re-imbursement for the maintenance of public patients.

Section 15 of Act 278 of the Public Acts of 1907, governing the Psychopathic Hospital provides as follows:

"Patients admitted to the Psychopathic Hospital are divided into two classes:

First, Public patients are such as are kept and maintained by the State;

Second, Private patients are such as are kept and maintained without expense to the State."

The order, a copy of which you enclosed, directs the payment of the entire cost of maintenance to the State in accordance with the provisions for re-imbursement in the insanity law. So far as the Psychopathic Hospital is concerned, the patient in question is a State charge and therefore, a public patient within the statutory provision of section 15. The State may or may not be able to enforce the order for reimbursement. We think that where patients are not accompanied by the

proper bond and advance payment to make them private patients within the provisions of the insanity law, they should be treated by the Psychopathic Hospital as public patients.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

INCOMPATIBILITY. COUNTY DRAIN COMMISSIONER AND TOWNSHIP TREASURER. Offices of county drain commissioner and township treasurer are incompatible.

January 11, 1911.

Mr. Russell R. McPeck, Prosecuting Attorney, Charlotte, Michigan:

Dear Sir—Your letter of December 31, 1910, received. Therein you inquire whether one man may hold the offices of county drain commissioner and township treasurer at the same time.

In reply would say that we find nothing in the statutes expressly prohibiting the holding of these offices simultaneously by one man. It is our opinion, however, that the offices of county drain commissioner and township treasurer are incompatible, inasmuch as the duties of one conflict with the duties of the other.

With reference to taxes generally, Section 3867 of the Compiled Laws of 1897 reads in part as follows:

"On receiving such tax roll, the township treasurer or other collector shall proceed to collect such taxes."

Section 4359 of the Compiled Laws of 1897 reads in part:

"All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges and shall be collected in the same manner as State and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes."

Thus it appears that the drain taxes are collected by the township treasurer. Sections 4354 and 4355 of the Compiled Laws of 1897, empower the county drain commissioner to compute the cost of drains, apportion such cost between the several townships, cities, villages, etc., affected thereby, and make a special assessment roll for such drain or drains. Thus, if one man held both offices, in his capacity of county drain commissioner he would assess taxes and in his capacity of township treasurer he would collect them.

Section 4361 of the Compiled Laws of 1897 provides in part:

"All orders for the payment for services rendered and work performed shall be drawn by the county drain commissioner upon the drain fund of each particular drain."

Section 4362 of the Compiled Laws of 1897 provides in part:

"The drain orders issued for each particular drain shall be received for drain taxes for benefits levied for the construction of such drain, by the township treasurer or county treasurer as the case may be."

Thus, if one man held both offices, in one capacity he would be draw-

ing orders for the payment of money and in the second capacity he would be receiving the same orders and disbursing funds.

Regarding the common law doctrine of incompatibility, Mechem on Public Officers, Section 422 reads as follows:

"This incompatibility, which shall operate to vacate the first office exists where the nature and duties of the two offices are such as to render it improper, from considerations of public policy for one person to hold both."

We believe it contrary to the dictates of public policy in this instance to permit one man to discharge simultaneously the conflicting duties of the offices of county drain commissioner and township treasurer. The acceptance of the office of county drain commissioner operates as a vacation of the office of township treasurer.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-w-o.

CITIZENSHIP. A person born in the United States of alien parents is a citizen of the United States.

January 11, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol:

Dear Sir—Your letter of recent date received. Therein you ask whether one, John S. Hall, is a citizen of the United States, under the following statements of facts:

Mr. Hall was born of alien parents in Pittsburg, Pennsylvania, U. S. A., August 26, 1867. He lived in that state with his parents for seven years and then removed with them to Canada. Said Hall was educated in Canada and in 1886 commenced to teach school in Canada and taught there for eight years. In 1894 he returned to the United States and settled in Detroit. He has resided in Detroit ever since. Said John S. Hall did not take out naturalization papers in Canada nor did he ever give up his allegiance to the United States. We are of the opinion that Mr. Hall is a citizen under the provisions of Section 1 of the fourteenth amendment to the Constitution of the United States which reads in part as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Very respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-w-o.

COUNTY DRAIN COMMISSIONER. BOARD OF SUPERVISORS.

The County Drain Commissioner, under Section 5 of chapter 9 of Act 118 of the P. A. of 1909 may not be reimbursed by the Board of Supervisors for clerk hire.

January 11, 1911.

Mr. Paul W. Chase, Prosecuting Attorney, Hillsdale, Michigan:

Dear Sir—We are in receipt of your letter of December 31st, in which you state "The Board of Supervisors at the October session of 1909, fixed the salary of the county drain commissioner at \$900 per year, and in their resolution fixing the salary at \$900 per year, they state: "That the salary be fixed at \$900 per year according to the Drain Law of 1909, Article 118, Section 5, and that such salary when so fixed, shall be payment in full for office work of all kinds, including recording."

You further state that the county drain commissioner drew his full salary of \$900 and has presented to the board a bill for clerk hire for recording proceedings to the amount of \$245.53. You submit the following inquiries:

1. Have the board of supervisors the authority to pass a resolution such as they did curtailing his clerk hire when fixing his salary at \$900?

2. Was it the intention of the Legislature to include clerk hire and office expenses when they used the language "actual necessary expenses incurred in the discharge of the duties of his said office," or would it be interpreted as meaning his necessary traveling expenses, surveying, postage and the like?

Section 5 of Chapter 9 of Act 118 of the Public Acts of 1909, after providing the method of fixing the salary of the county drain commissioner, provides that he "in addition thereto shall be allowed his actual necessary expenses incurred in the discharge of the duties of his said office by the board of supervisors, to be paid by the county, which shall be in full for all services rendered and expenses entailed in the performance of the duties of his office." The same chapter provides for the appointment of deputies when approved by the board of supervisors. Taking the chapter as a whole, it is our view that unless the appointment of a deputy is authorized by the board, it is contemplated that the drain commissioner shall perform all of the duties of his office. This would include, of course, the making of all records which the statute requires. We do not think that a bill for clerk hire comes within "actual necessary expenses incurred in the discharge of the duties of his said office." It is our opinion that the only allowances which the board is authorized to make under this heading is for traveling expenses, stationery, telephoning, surveying, and expenses of like character. It would certainly be a novel rule which would permit the commissioner to collect as expenses, clerk hire for performing the duties which the statute requires him to perform.

Yours very truly,
FRANZ C. KUHN,
Attorney General.

Hi-m-o.

CIRCUIT JUDGE. ELIGIBILITY. Person who is a citizen of another state at the time of election not eligible to the office of circuit judge.

January 11, 1911.

Hanchette & Lawton, Attorneys at Law, Hancock, Michigan:

Dear Sirs—I have your communication of January 5th, in which you ask whether a lawyer from another state who is a citizen of the United States can at this time take up a residence in your circuit and be a candidate for circuit judge at the coming spring election.

In reply thereto would say a person who is a resident of another state must reside in this State six months before he becomes an elector. See Section I, Article 3 of the Constitution. My attention has not been called to any provision in our statutes which indicates whether a candidate for circuit judge may be other than an elector. However, our Supreme Court, in the Attorney General vs. Abbott, 121 Mich. 540, in quoting from Judge Cooley in his work on Principles of Constitutional Law said:

“When the law is silent respecting qualifications to office, it must be understood that electors are eligible, but no others.”

It is also said:

“It may also be laid down as a general principle, founded in the nature of representative government, which supposes the electors, except in particular instances, to elect from among themselves, that no person can be elected to any office who is not himself possessed of the requisite qualifications for an elector; whatever other and different qualifications or disqualifications may be specified, every person who is voted for must, at all events, possess the qualifications and be free from the disqualifications which attach to the character of an elector.”

(Throop on Public Officers, pages 81 and 82.)

It is believed that the foregoing indicates the rule that is governing in the case which you present. The person to whom you refer cannot possibly be an elector at the time he is nominated, or at the time the circuit judge is elected. It is therefore my opinion that the person to whom you refer is not eligible to election as circuit judge.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-w-o.

JUVENILE COURT LAW. The expenses of investigating a home by a county agent should be certified by the judge of the county in which the home is situated and the county agent's reports should be filed there.

January 11, 1911.

Mr. Marl T. Murray, Secretary, Board of Corrections & Charities, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of January 9th requesting an opinion as to whether you should approve a claim of a county agent

for per diem and expenses incurred in visiting a home in which a child has been placed by an unincorporated institution.

Section 5560 of the Compiled Laws makes it the duty of the county agent to visit such homes. Act 42 of the Public Acts of 1899, however, makes it a misdemeanor for an unincorporated society to engage in the business of placing minor children in homes on indenture by adoption or otherwise. In view of the fact that the placing of children by such societies in homes is made an offense under the statute, we think the county agent is not warranted in incurring the expense of a visit and presenting his bill for the same to the board for approval.

We are, therefore, of the opinion that you should not approve the county agent's bill for such services.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

PRIMARY ELECTION LAW. NOMINATION PETITIONS. CIRCUIT JUDGE. Nomination petitions of candidates for the office of circuit judge should be filed with Secretary of State on or before the fifteenth day prior to the March primaries.

January 11, 1911.

Mr. Fred A. Acker, County Clerk, Adrian, Michigan:

Dear Sir—I have your communication of January 9th, in which you ask where nomination petitions for circuit judge shall be filed and the number of days prior to the March primaries they must be filed.

In reply thereto would say it is our opinion that nomination petitions of candidates for the office of circuit judge should be filed with the Secretary of State on or before the fifteenth day prior to the March primaries.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-w-o.

INCOMPATIBILITY. SUPERINTENDENT OF POOR AND COUNTY TRUANT OFFICER. The offices of superintendent of the poor and county truant officer are not incompatible.

January 17, 1911.

Mr. William P. Kracht, County Clerk, Mt. Clemens, Michigan:

Dear Sir—Your letter of the 5th instant received. Therein you submit an inquiry as to whether one man may at the same time hold the offices of superintendent of the poor and county truant officer.

In reply thereto would say that we find no constitutional or statutory provision prohibiting one man from holding both of these offices simultaneously. We note your suggestion that the superintendent of the poor may be called upon to give relief to poor children and that the county truant officer may in the course of the performance of his duties have to make complaint regarding the same children for non-at-

tendance at school. We do not believe that there is any conflict in the duties of the two offices referred to. If one man held both offices in his capacity as Superintendent of the Poor he might be called upon to afford relief to straitened families, to clothe children, etc., to make them presentable at school. If in spite thereof such children were not sent to the school, it would be his duty as truant officer to enter a complaint as provided by law. It is our conclusion that there is nothing inconsistent in this duty and that the two offices are compatible.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-m-o.

BANKING LAW. Salaries of examiners after the taking effect of Act 103, Public Acts of 1909.

January 19, 1911.

Hon. W. Donovan, Deputy Banking Commissioner, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of January 11th, calling our attention to Section 6127 of the Compiled Laws, as amended by Act 103 of the Public Acts of 1909, relative to the salaries of bank examiners and requesting the opinion of this department as to the salaries these examiners will be entitled to receive when they receive commissions from the newly appointed commissioner.

The language of the statute in question is as follows:

“Salaries of the examiners shall be the sum of \$1,700 per annum during the first year of their employment and shall be increased \$100 each year of such employment until the full sum of \$2,000 is reached, which sum shall be their annual salary thereafter.”

This amendment took effect on September 1, 1909. It is the general rule of statutory construction that statutes are presumed to be prospective only in their operation and will be retroactive only when the legislative intent is clear. There is certainly nothing in this amendment which indicates a legislative intent to make it retroactive. It is, therefore, our view that no matter what length of time an examiner had served, he was not entitled to an increase in pay until a service of one year after September 1, 1909. Examiners who have been in service continuously since September 1, 1909, would be entitled, upon receiving their new commission, to receive a salary of \$1,800 until September 1, 1911, when they would be entitled to receive a salary of \$1,900 and so on. Those who have been appointed examiners since that time would, of course, be entitled to an increase based on the time of service when they have completed a year's service in the department.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

VILLAGE CHARTER. BOARD OF SUPERVISORS. PETITION.

Petition for incorporation of village under general village incorporation act should be filed with board of supervisors 30 days before the October session or 30 days prior to special session called for that purpose.

January 19, 1911.

Mr. Asa K. Hayden, Prosecuting Attorney, Cassopolis, Michigan:

Dear Sir—I have your communication of January 11, which reads in part as follows:

“On December 3, 1910, a petition was filed regular in form and properly signed for the incorporation of the Village of Edwardsburg in Ontwa township, this county, under the provisions of Act 278 of the Public Acts of 1909. The board of supervisors of this county convened, January 9, 1911, having adjourned to that date at the October session of 1910. Under the provisions of Section 4 of the above named act a petition filed under the act must be so filed, ‘not less than thirty days before the convening of such board in regular session, or in any special session called for the purpose of considering said petition.’”

In reply thereto would say it would seem to be the intent of the legislature to require the petition in question to be filed at least thirty days before the October session of the board or thirty days before a special session called for the purpose of considering the petition. The January session can hardly be said to be such a session of the board as seems to have been contemplated by the legislature. The answer to your inquiry is subject to some doubts, but it would seem the safer rule, under all of the circumstances, and in view of the fact that the regularity of the incorporation of the village may depend upon this point, to hold that the board of supervisors would not have jurisdiction to consider the petition at its January meeting but that such petition must be filed at least thirty days prior to the October session or thirty days prior to the meeting of the board called for the purpose of considering the petition.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-w-o.

BOARD OF SUPERVISORS. POWERS TO FIX SALARIES. Section 9 of Article VIII of the Revised Constitution giving boards of supervisors exclusive power to “fix the salaries and compensation of all county officials not otherwise provided for by law” does not give them such power where the legislature has made direct provision for their compensation.

January 19, 1911.

Mr. Wm. J. Branstrom, [Pros. Atty.], Fremont, Michigan:

Dear Sir—We are in receipt of your letter of January 11, in which you submit an inquiry: “Can the board of supervisors in any county in the Lower Peninsula place the sheriff’s office on a salary basis?”

In reply thereto will say that Section 9 of Article 8 of the Revised Constitution contains this provision:

"The board of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law."

The various statutes fixing the fees which the sheriff may receive for the performance of his official duties constitute, in our judgment, the fixing of his compensation by law so as to take the sheriff's office out of the provision above quoted, permitting the board of supervisors to fix the compensation. We appreciate the fact that there are some statements in the debates of the Constitutional Convention which indicate that some members of the convention may have thought otherwise. However, the language of the constitutional provision seems to be plain and to indicate clearly that the board of supervisors should have no authority over the matter of compensation of county officers where the legislature has made direct provision for their compensation.

Yours very truly,

FRANZ C. KUHN,
Attorney General.

Hi-w-o.

BOARD OF STATE AUDITORS. CUSTER MONUMENT COMMISSION. The Board of State Auditors has authority to audit vouchers for the printing of a volume containing record of the proceedings and speeches delivered at the unveiling of the Custer statue.

January 19, 1911.

Board of State Auditors, Capitol, Lansing:

Dear Sirs—We are in receipt of your letter of January 14, requesting the opinion of this department as to whether the Board of State Auditors have authority to allow the cost of printing a history of the statue and record of proceedings and speeches delivered at the unveiling of the Custer Monument at Monroe.

Act 92 of the Public Acts of 1909 provides an appropriation of \$2,000 for the expenses of the ceremonies connected with the unveiling of the Custer monument. Among other things the appropriation was:

"To provide for printing a suitable volume containing a history of the statue and the record of the proceedings and speeches delivered at the unveiling of the statue, which volume shall be similar to that heretofore issued by the State entitled 'Michigan at Gettysburg.'"

On December 15, 1910, there was a balance of \$820.72 unexpended from this appropriation which sum was at the time credited to the general fund of the State, it is claimed, under the provisions of the general accounting law. There may be some question as to whether this appropriation came within the provisions of the general accounting law so as to require that the unexpended portion of the appropriation should be transferred to the general fund on December 15, 1910. It is clear to us, however, that the Board of State Auditors would be warranted in auditing vouchers for the printing of this volume, not exceeding in amount the unexpended portion of the appropriation.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

H-w-o.

TAXATION. Real property owned by a railroad company which is not actually occupied in the exercise of its franchise or in use in the proper operation and conduct of its business is subject to taxation under the general tax law.

January 19, 1911.

Mr. W. G. Anderson, Village President, Lincoln, Michigan:

Dear Sir—Your letter of the 17th instant received, in which you state:

"The Detroit & Mackinac R. R. has quite a few lots in this village adjoining and forming part of their right-of-way, and I would like to know if it is assessable for taxes, and if not, why?"

In reply thereto would say that the property of railroads is assessed by the State Board of Assessors under Act 282 of the Public Acts of 1905, as amended. Section 5 of said act, as amended by Act No. 49 of the Public Acts of 1909 contains a proviso to the effect that the property so assessed:

"Shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such persons, corporations, companies, co-partnerships or associations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation and conduct of their business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities in which the same may be situated."

It is therefore clear that the right-of-way or any real estate owned or in use in the proper operation and conduct of the Detroit & Mackinac Railroad Company's business, or which is occupied in the exercise of its franchise, would not be subject to taxation under the General Tax Law. It is primarily the duty of the assessing officer to determine whether or not the property to which you refer is subject to taxation under the General Tax Law, which question is subject to review by the courts.

Subdivision 8 of Section 7 of the General Tax Law also provides for the exemption of real property of corporations exempt under the laws of this State by reason of paying specific taxes in lieu of all other taxes for the support of the State. I particularly call your attention to the following decisions of the supreme court:

Grand Rapids & Indiana Ry. Co. vs. Auditor General, 144 Mich. 77;

Grand Rapids & Indiana Ry. Co. vs. City of Grand Rapids, 137 Mich. 587.

An examination of the opinions of the supreme court in these cases will fully advise you as to the legal questions involved in your inquiry.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

VILLAGE. PETITION TO INCORPORATE. Petition for incorporation of village may be signed by qualified electors residing within any part of the townships affected.

January 24, 1911.

Mr. Frank N. Renaud, Attorney at Law, Hammond Bldg., Detroit, Michigan:

Dear Sir—Your letter of January 17th addressed to the Secretary of State has been referred to this department.

Therein you state that it is proposed to incorporate into a village a certain part of the township of Grosse Pointe, and also a part of Lake Township, and you ask whether the petition to incorporate as a village should be signed only by qualified electors residing within the territory proposed to be included in the village or whether the petition can be signed by qualified electors residing within any part of the township.

In reply thereto would say, that Section 2 of Act No. 278 of the Public Acts of 1909, entitled: "An Act to provide for the incorporation of villages and for changing their boundaries" reads as follows:

"Villages may be incorporated or territory detached therefrom or added thereto, or consolidation made of two or more villages into one village by proceedings originating by petition therefor signed by qualified electors residing within the cities, villages or townships to be affected thereby, to a number not less than one per centum of the population of the territory affected thereby according to the last preceding United States census, which number shall in no case be less than one hundred, and not less than twenty-five of the signatures to such petition shall be obtained from each city, village or township to be affected by the proposed change. Such petition shall be verified by the oath of one or more such petitioners."

Section 5 of the Act provides as follows:

"The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed, except that the question of incorporating a new village shall be determined by a majority of the votes cast at an election at which only the electors residing within the territory proposed to be incorporated shall vote."

I am inclined to the opinion that under these provisions of the statute the petition for incorporation may be signed by qualified electors residing within any part of either of the townships affected. While Section 5 of the Act provides that the question of incorporation shall be determined by a majority of the votes cast at an election at which only the electors residing within the territory proposed to be incorporated shall vote, Section 2 of the Act provides that the petition for incorporation may be signed by qualified electors residing within the cities, villages or townships to be affected thereby to a number not less than one per cent of the population of the territory affected according to the last preceding United States census.

The only way the board of supervisors could determine whether or not the petition was signed by the requisite number of qualified elec-

tors would be to estimate the number according to the last census of the townships as it has no official census of the population of the territory proposed to be incorporated as a village.

It seems to me clear that the petition may be signed by qualified electors residing within the township of Grosse Point and any of the villages therein, and also Lake township and any of the villages therein.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-n.

CORPORATIONS. A corporation organized under Act 232 of the Public Acts of 1903, as amended, may not turn in applications for patents in payment for capital stock.

January 24, 1911.

Hon. Frederick C. Martindale, Secretary of State, Capitol:

Dear Sir—We have examined the proposed Articles of Association referred to this department, in which the following items have been received in payment for capital stock:

<p>“Item 2. The undivided one-half interest in and to an invention for Compined Vending and Display Mechanism, application for the issuance of a U. S. patent thereon being now pending in the U. S. patent office, Serial No. 451659..</p>	<p>\$4,850 00</p>
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<p>Item 3. The undivided two-thirds interest of Joseph J. Schermack to and in an invention for improvement in Strip Feeding and Severing Mechanism, application for the issuance of a U. S. patent thereon being now pending, same having been disclosed to and placed with Whittemore, Hulbert and Whittemore, Patent Attorneys, Detroit, Michigan, September 8, 1909</p>	<p>9,700 00</p>
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<p>Item 4. The entire interest in and to an invention for improvement on Stamp Affixer Mechanism, application for the issuance of a U. S. Patent thereon being now pending in the U. S. patent office, Serial number 522547.....</p>	<p>19,400 00</p>
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<p>Item 5. The entire interest of Joseph J. Schermack in and to an invention for improvement on Postage Stamp Vending Machine, an application for the issuance of a U. S. patent thereon being now pending, the same having been prepared by Mr. Swan of the firm of Parker & Burton, Patent Attorneys, Detroit, Michigan, and executed by Joseph J. Schermack, January 4th, 1911.....</p>	<p>63,050 00.”</p>
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You request the opinion of this department as to whether these Articles may properly be accepted for filing and recording. In reply thereto will say, that subdivision 6 of Section 2 of Act 232 of the Public Acts of 1903, as amended, provides in part as follows:

“Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made, with the valuation

at which each item is taken, which valuation shall be conclusive in absence of actual fraud: Provided, That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court having competent jurisdiction for the satisfaction of any judgment or decree against such corporation."

It will be noted that property which may be accepted in payment for capital stock must possess two incidents.

First. It must be property that can be sold and transferred by the corporation, and

Second. It must be property subject to levy and sale on execution or other process for the satisfaction of judgment or decrees against the corporation. It has long been the rule that even a completed patent is not subject to sale upon execution.

Freeman on Executions Volume 1, p. 417, 17 Cyc. 547.

However completed patents may be reached by a judgment, creditors bill.

Alger v. Murry, 105 U. S. 126.

Walker on Patents, Section 156.

A careful examination of the authorities however has not disclosed any case in which a judgment, creditors bill or other equitable process has been able to reach such an intangible and inchoate right as an application for a patent which has not been granted. The only cases to which our attention has been called bearing upon this question are the following:

Gillette v. Bate, 86 N. Y. 87,

where the court said:

"We are inclined to accede to the view of counsel that unpatented inventions are not property in such sense that they can be reached by creditors. The inventor of an unpatented improvement has an inchoate right to its exclusive use, which he may perfect and render absolute by proceedings in the manner which the law requires and the laws of Congress recognize assignability of a perfected invention although no patent has been issued. But it is the patent only which becomes an exclusive property, and while the right is inchoate, it is, we think at least doubtful whether it has the characteristics of property so as to justify a compulsory transfer by the inventor."

In the case of Hesse v. Stevenson 3 Bos. & P., p. 565, it is said by Lord L. Alvanley:

"It is said that although by the assignment every right and interest and every right of action, as well as right of possession and possibility of interest is taken out of the bankrupt and vested in the assignees, yet that the fruits of a man's own invention do not pass. It is true that the schemes which a man may have in his own head before he obtains a certificate or the fruits which he may make of such schemes do not pass, nor could the assignees require him to assign them over,

•

provided he does not carry his schemes into effect until after he has obtained his certificate."

This language is quoted with approval in the case of *Pacific Bank vs. Robinson*, 57 Cal. 520.

The entire purpose of subdivision 6 is to require that only such property shall be accepted in payment for capital stock as may be reached by the creditors of the corporation should occasion demand, and we are of the opinion that you should refuse to accept Articles of Association of corporations organized under the provisions of Act 232, which show that capital stock paid for by means of inventions or assignments of the same upon which no patent has been obtained.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

H-n.

INSURANCE. The provisions of Section 7193 of the Compiled Laws of 1897, requiring deposit to be made by "stock" life insurance companies one year after the date of the articles of association is not mandatory.

January 24, 1911.

Hon. Albert E. Sleeper, State Treasurer, Lansing, Michigan:

Dear Sir—We are in receipt of a letter from Hon. Lawton T. Hemans, under date of January 14th, in which he states that the articles of association of the Peninsular Life Insurance Company were executed on June 15, 1909; that since that date stock has been subscribed for and the company is now ready to make its deposit of securities with the State Treasurer and begin business. The question arises as to the duty of the State Treasurer to receive this deposit.

In answer to this inquiry would say that Section 7193 of the Compiled Laws of 1897 provides, in part, that:

"No such stock company * * * * shall be authorized to issue policies or assume any risk whatever until they shall have deposited with the State Treasurer, as security for any liability to insured parties, stocks or bonds of the United States or of this State, or of any city or county of this State authorized by act of legislature to issue the same, or first mortgage bonds of corporations organized under the laws of the State of Michigan, to the amount in par value exclusive of interest of not less than one hundred thousand dollars, which stocks or bonds shall be retained by the State Treasurer and disposed of as hereinafter provided: Provided, however, That said deposits shall be made within one year of the date of the articles of association."

The question arises whether the proviso, above quoted, is directory or mandatory. It will be noted with respect to this proviso that the time of depositing the securities is only an incident to the beginning of the business of the corporation, there is no hearing at this time nor any requirement of notice. The only possible effect of holding this provision mandatory would be to require a new publication and execution of the articles of association. It seems to us that the case is directly within

the rule laid down in Sutherland on Statutory Construction, Section 611, which is as follows:

"Those directions which are not of the essence of the thing to be done but which are given with a view merely to the proper, orderly and prompt conduct of the business, and by the failure to obey which the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory; and if the act is performed, but not in the time or in the precise mode indicated, it will still be sufficient if that which is done accomplishes the substantial purposes of the statute."

We are, therefore, of the opinion that the provision as to the time of depositing the securities is only directory and that you should receive the same when otherwise properly presented.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

OFFICERS. Members of the State Board of Education are State Officers within the meaning of the Constitution and an appointment to fill vacancy while the Senate is in session would require confirmation by the Senate.

January 24, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I am in receipt of your communication of the 24th instant in which you ask if an appointment of the Governor to fill a vacancy on the State Board of Education caused by a member's resignation requires the confirmation of the Senate.

In reply thereto I call your attention to Section 10 of Article VI of the Constitution which reads as follows:

"When a vacancy shall occur in any of the State offices the Governor shall fill the same by appointment by and with the advice and consent of the Senate if in session."

I also call your attention to Section 6 of Article XI of the Constitution which provides for a State Board of Education. It therefore follows that the members of the State Board of Education are State officers within the meaning of the Constitution and that an appointment to fill vacancy while the Senate is in session would require confirmation by the Senate.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

TAXATION. DOG TAX. Household goods may be seized for payment of delinquent dog tax.

January 24, 1911.

Mr. J. K. Seafuse, Lake City, Michigan:

Dear Sir—Your letter of the 14th inst. received. Therein you ask whether you may take household goods for unpaid dog tax.

Replying thereto would say that Section 3 of Act No. 48, Public Acts of 1901 provides, that dog taxes—

“Shall be assessed to and collected from such persons as shall be liable for the same, in the same manner as other township and city taxes are assessed and collected, and with like power to distrain and sell any property of the owner or owners, keeper or keepers of dogs liable to be taxed.”

Section 1 of Article 14 of the Revised Constitution of Michigan reads as follows:

“The personal property of every resident of this State, to consist of such property only as shall be designated by law, shall be exempt to the amount of not less than five hundred dollars from sale on execution or other final process of any court.”

Section 10322 of the Compiled Laws of 1897 reads in part:

“The following property shall be exempt from levy and sale under any execution, or upon any other final processes of a court. * * * To each householder, household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars.”

It will be observed that under the Constitutional and statutory provisions last quoted the household goods of a householder up to a certain amount are ordinarily exempt from process. When, however, there is a question of unpaid taxes involved it would seem that no property is exempt from seizure and sale. Section 47 of the General Tax Law as compiled by the Auditor General, Edition of 1907, reads in part:

“If any person, firm or corporation shall neglect or refuse to pay any tax assessed to him or them, the township or city treasurer, as the case may be, shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found in the State, and from which seizure no property shall be exempt.”

In a note to said above section there are numerous authorities quoted dealing in one form and another with seizures of personal property to satisfy taxes. Among other things it is stated that:

“Exemption from execution under Section 10322 of the Compiled Laws of 1897 does not release property from liability to seizure and sale for taxes for which its owner is liable.”

Also:

“No property of a person liable for a tax is free from seizure and sale for taxes. If the provisions of this section were fully observed by collecting officers there would be much less unpaid taxes returned.”

It would appear, therefore, that the rule relative to exemptions is

different in a case of refusal or neglect to pay taxes. Therefore it is our belief that you can seize household goods for delinquent dog taxes.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-n-o.

PROSECUTING ATTORNEY. VACANCIES. Circuit judge may fill the vacancy in the office of prosecuting attorney for the residue of the unexpired term.

January 24, 1911.

Hon. Samuel S. Cooper, Circuit Judge, Ironwood, Michigan:

Dear Sir—Your letter of January 14th received. Therein you inquire whether you have the right to fill by appointment a vacancy in the office of prosecuting attorney of Ontonagon county which is one of the counties in your circuit, or whether it is the duty of the board of supervisors to call a special election to fill such vacancy.

In reply will call your attention to Section 11 of Article VII of the Revised Constitution of Michigan, which reads:

"The clerk of each county organized for judicial purposes shall be clerk of the circuit court for such county. *The judges of the circuit courts may fill any vacancy in the offices of county clerk or prosecuting attorney within their respective jurisdictions*, but shall not exercise any other power of appointment to public office."

Section 3 of Article XI of the Constitution reads, in part:

"When a vacancy shall occur in the office of regent it shall be filled by appointment of the Governor."

Section 3596 of the Compiled Laws of 1897 reads:

"Special elections may be held under the following cases and for the election of the following officers, viz.:

1. When a vacancy shall occur in the offices of senator or representative in the State legislature, representative in congress, judge of the circuit or district court, regent of the university or member of the State Board of Education.

2. When there has been no choice at a general election of representative in congress.

3. When the right of office of a person elected to any of the afore-said district or county offices shall cease before the commencement of the term of service for which he shall have been elected.

4. When a vacancy shall occur in either of the said county offices after the commencement of the term of service and more than six months before the next general election.

5. When in any other case of a vacancy not particularly provided for in this section, the Governor shall in his discretion so direct."

It will be observed that there is some degree of conflict between the constitutional provision for appointment and the statutory provision for a special election in the case of a vacancy in the offices of regent of the university and prosecuting attorney. This department has held that a vacancy in the office of regent of the university should be filled by appointment of the Governor for the entire portion of the unexpired term. (Attorney General Ellis Report, 1894, page 216; Attorney Gene-

ral Oren Report, 1902, page 131.) We believe the rule to be the same in case of a vacancy in the office of prosecuting attorney and that you may fill such vacancy by appointment for the remainder of the unexpired term.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

OFFICERS. TERM OF OFFICE OF JURY COMMISSIONERS OF BERRIEN COUNTY. The term of office of members of the Board of Jury Commissioners for the county of Berrien, appointed December 28, 1910, expires August 1, 1911.

January 24, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing, Michigan:

Dear Sir—In reply to your inquiry concerning the term of the jury commissioners for the county of Berrien, appointed by the Governor. December 28, 1910, I desire to say that Act 58 of the Public Acts of 1905, which provides for a board of jury commissioners for the county of Berrien, makes it the duty of the Governor to appoint three persons to constitute a board of jury commissioners for said county. The act provides in section one, that:

“Said commissioners shall be appointed for the period of one year and the said Governor shall from time to time appoint persons of like qualifications as successors to such commissioners and shall also fill all vacancies occurring on said board from any cause.”

The same section further provides:

“The official term of said commissioners shall begin August one, A. D. nineteen hundred and five and all subsequent appointments, except for the filling of vacancies, shall be for the term of one year. Said commissioners shall respectively serve until their successors are appointed and qualified.”

It evidently was the intention of the legislature by these provisions of the statute to provide and fix the term of office for the members of the board of jury commissioners, the term to commence upon the first day of August and to continue for the period of one year. When such is the case, the general rule is that one appointed to the office during the term, either to fill a vacancy or as successor to a previous incumbent, holds only for the balance of the unexpired term.

29 Cyc. 1398;
People vs. McClave, 99 N. Y. 83;
State vs. Stonestreet, 99 Mo. 361.

In 29 Cyc. the rule is stated as follows:

“In the case of appointive offices, the beginning of the term of the first appointee determines the limits of the terms of successive appointees, so that one appointed in the middle of the term, because of the vacation of an office during the term of an incumbent, or because of his holding over, is not appointed for longer than the unexpired term.”

In *People vs. McClave*, supra, it was held, as stated in the syllabus, that:

"The word 'term' is to be construed as designating consecutive periods all following each other in regular order; the one commencing when the other ends; and the incumbent appointed in any such period is to be treated as the incumbent of the term or period to which his appointment relates, his office expiring with the expiration of the term."

Accordingly, where the term was for a period of six years, it was held that when the term of a police commissioner expired April 30, 1878, and his successor was not appointed until May 15, 1880, the term of the latter expired April 30, 1884.

While under the peculiar wording of this act the question of its proper construction is not entirely free from difficulty, I am inclined to the opinion that courts would follow the general rule, above stated, and hold that the term of office of the jury commissioners, appointed December 28, 1910, will expire August 1, 1911.*

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

*See case of *People vs. Tonneller*, submitted Nov. 16, 1911.

LEGISLATURE. EMPLOYEES OF HOUSE OF REPRESENTATIVES AND SENATE. COMPENSATION FOR SUNDAY. Certain clerks of house of representatives and senate not entitled to compensation for Sunday.

January 24, 1911.

Hon. Herbert F. Baker, Speaker, House of Representatives, Capitol, Lansing:

Dear Sir—I have your communication of January 16, which reads as follows:

"I am advised that in conformity with a long established custom, employes of the legislature are paid for services on Sunday when, in fact, few of them render any service on that day.

Will you kindly advise me under what conditions, if any, such employes are entitled to pay for that day?"

In reply thereto would say the employes in the legislature are appointed and compensated under authority of the statutes of this State. Act No. 255 of the Public Acts of 1905 prescribes the duties and compensation of the law clerk of the senate, the senate stenographer, law clerk of the house, and speaker's messenger. Act No. 85 of the Public Acts of 1907 reads in part as follows:

"The per diem compensation of the secretary of the senate shall be ten dollars; of the first assistant secretary, six dollars; of the second assistant secretary six dollars; of the financial clerk and secretary's messenger, five dollars; of the proof-reader, six dollars; assistant proof-reader, who shall be a stenographer, five dollars; of the sergeant-at-arms, five dollars; which compensation shall be in full for all services performed during any regular or special session of the legislature, for which they are elected by the senate or appointed by a superior officer. The per

diem compensation of the clerk of the house shall be ten dollars; of the journal clerk, seven dollars, of the bill clerk, six dollars; of the reading clerk, six dollars; of the financial clerk, six dollars; of the proof-readers, six dollars; of the sergeant-at-arms, five dollars; which compensation shall be in full for all services performed during any regular or special session of the legislature for which they are elected by the house or appointed by a superior officer. The per diem compensation of the clerks employed with the consent of the senate or house of representatives or by any standing or special committee with the consent of either of said houses, shall be three dollars each for actual attendance during the session; the per diem compensation of the janitors of the senate and house of representatives and their authorized assistants, the keeper of the cloak room, and the keeper of the document room, and their authorized assistants, and of the postmaster of the legislature, shall be three dollars; and that of the messengers two dollars for the time actually employed in attendance during the session."

This latter act was amended by Act No. 1 and Act No. 207 of the Public Acts of 1909, made necessary when the Constitution changed the salary of the members of the legislature, which amendments relate only to members of the legislature.

It will be observed that in said Act No. 85 of the Public Acts of 1907 there is a per diem compensation prescribed for the officers of the house and senate, although nothing is said about actual attendance, while for the clerks, janitors, etc., employed by the senate and the house or by any special or standing committee with the consent of either of said houses, the per diem compensation is prescribed for actual attendance. It will also be observed that under authority of Act No. 255 of the Public Acts of 1905, the compensation of the officers and employes therein named is a per diem compensation for actual attendance during the session. In view of the foregoing, it is my opinion that since the clerks employed in the senate or house or by any standing or special committee with the consent of either of said houses, the janitors and assistants in the senate or house, the keeper of the cloak room, the keeper of the document room, and their authorized assistants, and the postmaster, together with the officers and employes mentioned in Act No. 255 of the Public Acts of 1905 are by express language of the statute only entitled to a per diem compensation for actual attendance during the session, they are not entitled to compensation either for Sunday or for any day except those days on which they are in actual attendance.

Relative to the officers of the house and senate not above mentioned and including the secretary of the senate, the first assistant secretary, the second assistant secretary, the financial clerk, the secretary's messenger, the proof reader, assistant proof reader, sergeant-at-arms of the senate, clerk of the house, journal clerk, bill clerk, financial clerk, proof readers, and sergeant-at-arms of the house, the question presented is whether in view of the fact that the statute does not expressly refer to actual attendance, a different rule should prevail. The general rule seems to be that officers entitled to a per diem compensation are not entitled to compensation during a period of adjournment, but that they are entitled to the per diem compensation prescribed for each day on which they perform substantial official service, whether or not it consumes the entire day.

23 American & English Enc. of Law, Second Edition, page 387;

Smith vs. Jefferson County, 10 Colo. 17;

Morgan vs. Ruffington, 21 Mo. 549;

Moren, Lieutenant Governor, vs. Blue, 47 Ala. 709.

In the case last cited the code provided that:

"The secretary of the senate is allowed eight dollars per day."

The General Assembly took a recess from the sixteenth day of December until the eighteenth day of January. Blue presented his account for services at eight dollars per day during the recess. The case finally reached the Supreme Court of Alabama, and it was held that the secretary was not entitled to such per diem compensation during the period of the adjournment. The court in that case said:

"The general rule is that where public officers or servants receive a per diem compensation, there must be a per diem service." (710.)

Following the above rules, the officers of the house and senate are entitled to a statutory compensation for those days only on which service was rendered. It is believed that this excludes compensation for Sunday.

There is, however, an additional and statutory reason why the officers and employes of the house and senate are not entitled to per diem compensation on Sunday. Section 5912 of the Compiled Laws of 1897 provides:

"No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take part in any sport, game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages. And every person so offending shall be punished by fine not exceeding ten dollars for each offense."

Sunday in law, is defined as a day set apart for the cessation of labor and business generally.

27 American & English Enc. of Law, page 388.

The constitutionality of this statute is not an open question in this State. It will be observed that the above quoted statute prohibits any manner of labor, business or work. "Labor, business or work" as used in Sunday statutes when not restricted by the words "ordinary calling" comprehend within their prohibition all acts of a secular nature, belonging to or connected with ordinary business or common worldly affairs, although they may not fall within the line of the daily business or occupation in which a person happened to be employed.

27 American & English Enc. of Law, Second Edition, page 394.

It is believed that such labor, business or work as is indulged in by the officers and employes of the legislature comes clearly within the provisions of the statute above quoted. It is difficult to understand what reasoning would warrant the payment of a per diem compensation on Sunday, when the labor, business or work for which compensation is to be granted is expressly prohibited by law. Neither will the fact that

it may be more convenient for such officers and employes to perform the duties devolving upon them on Sunday, bring them without the terms of the statute.

Bidwell vs. Grand Trunk Western Ry. Co., 148 Mich. 534;

Allen vs. Duffie, 43 Mich. 1;

27 Am. & Eng. Enc. of Law, Second Ed., page 399.

The fact that there may be a custom for the payment of the officers and employes of the legislature for Sunday, cannot alter this conclusion.

This question was presented and expressly passed upon by our Supreme Court in Cook vs. Auditor General, 129 Mich. 48.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-w-o.

CONSTITUTIONAL LAW. LOCAL ACTS. The legislature has no authority to provide by local act for the change of boundaries of fractional school districts.

January 25, 1911.

Hon. Eugene Foster, State Senate, Capitol, Lansing:

Dear Sir—I have examined the letter of January 16th from Arthur Long, relative to district No. 6 fractional of Franklin and Hamilton townships. The legislature has already provided by general law for the change of the boundaries of school districts and it is therefore, our view that under the revised constitution the legislature has no authority to provide by local act for the change of such boundaries.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

COUNTIES. BOARD OF SUPERVISORS. The compensation of county officers cannot be fixed by the board of supervisors when the method of fixing the compensation is prescribed by the legislature.

January 25, 1911.

Mr. Edward L. Brooks, Attorney-at-Law, Fremont, Michigan:

Dear Sir—Your esteemed favor of January 20th, relative to the interpretation placed upon Section 9 of Article 8 of the revised constitution, has been received. In passing judgment upon this clause of the constitution we considered the language of the convention debates to which you refer. You are, undoubtedly, familiar with the rule of construction to the effect that the convention debates can only be considered in case the language of the provision in question is not clear. In other words, that it is the understanding of the people who adopt the constitution and not that of the framers which is to govern. The language of the provision in question is as follows:

“The boards of supervisors shall have exclusive power to fix the

salaries and compensation of all county officials not otherwise provided for by law."

This provision gives the board of supervisors authority to fix the compensation only in those cases in which the legislature has not provided a different method and our conclusion is simply this,—that the legislature having provided in the case of sheriffs for their fees with extra compensation for special services, the board of supervisors has no power to repeal the enactment of the legislature in this regard and say that the compensation shall be a salary and not fees. In other words, the compensation of county officers cannot be fixed by the board of supervisors when the legislature has prescribed a different method.

There are a few counties in the lower peninsula which have a special act placing county officers upon a salary basis. There are certain offices, such as that of county treasurer, where the legislature is authorized by law to fix a salary. The opinion which we gave and a copy of which is enclosed herewith, does not presume to affect such cases as these.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

TAXATION. Indefinite description of real estate.

January 26, 1911.

Mr. J. M. Paul, Supervisor, Eau Claire, Michigan:

Dear Sir—We are in receipt of your communication of the 24th inst. enclosing a copy of a portion of your assessment roll with respect to the assessment against the Indiana and Michigan Electric Company for Lake Chapin Dam, also letter from said company refusing to pay the taxes and claiming that the assessment was incorrect and illegal.

In reply thereto would say that I am advised by the Auditor General that this property was returned delinquent for taxes of 1909, having been assessed for said year in substantially the same way, the description as given being, "Lake Chapin Dam within the borders of Berrien township, section 18, town 6, range 17." The reason given for cancelling the taxes of 1909 was that the description was indefinite and we think the same is true of the assessment for 1910. Real estate must be properly described on the assessment roll and the water rights including dam would be taken into consideration in determining the value of the property. We therefore advise you that in our opinion the assessment is invalid, to which you direct our attention, and will no doubt be cancelled by the Auditor General when returned to that official, as it will have to be in the event of non-payment.

I herewith return to you the letter directed to the township treasurer and the copy of your assessment roll.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

TAXATION. Rule for the taxation of real property belonging to a corporation paying specific taxes, where such property is not used for the purposes for which the corporation was organized.

January 26, 1911.

Mr. George B. Richardson, County Treasurer, Pontiac, Michigan:

Dear Sir—We are in receipt of your letter of the 21st instant, relative to taxes assessed against the west thirty feet of south twenty feet of Lot 48, and west forty-six feet of Lot 39 for the year 1908, 1909 and 1910, which property belongs to the Oakland Telephone Company.

In reply thereto I call your attention to the following cases:

Grand Rapids & Indiana Ry. Co. v. City of Grand Rapids,
137 Mich. 587;

Grand Rapids & Indiana Ry. Co. v. Auditor General, 144
Mich. 77.

An examination of these cases will give you the rule relative to the assessment of property of corporations paying specific taxes with respect to property which is not used for the purposes for which the corporation was organized. I assume that the land in question has been returned for the taxes of 1908 and 1909. The Auditor General would be the only officer authorized to cancel the sales if it should appear by proper showing to that official that the land was not properly assessed, until such time as the matter might come before the court on petition of the Auditor General for decree of sale.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

VILLAGE CHARTER. All matters intended to be included in village charter should be set forth in full.

January 31, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I have your communication of January 30th, enclosing what purports to be a proposed charter for the Village of Akron. You ask to be advised what your rights and duties are with reference to this matter.

An examination of the proposed charter indicates that the commission met and suggested some general law of the State as the proposed charter of the village. All that is submitted to you is the report of the proceedings of the commission but the proposed charter is absent except by reference. Section 18 of Act 278 of the Public Acts of 1909 requires that every charter framed before presentation to a vote of the electors shall be presented to the Governor who shall examine the same and append thereto a certificate setting forth that he has examined it, etc. However, there is nothing in the case presented for you to examine. I

would suggest that the entire matter be returned to the proper authority with the suggestion that the proposed charter be set forth in full for your examination.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

JUVENILE COURT LAW. Section 5563 et seq., Compiled Laws relative to ill-treated children is superseded by the provisions of the Juvenile Court Law.

February 1, 1911.

Hon. W. T. Potter, Judge of Probate, Marquette, Michigan:

Dear Sir—Replying to your letter of January 30th, will say that this department has held that Sections 5563 to 5567 of the Compiled Laws of 1897, relative to ill-treated children has been superseded by the provisions of the Juvenile Court Law and that probate judges have no authority to commit children to the State public school except pursuant to the Juvenile Court Law.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-m-o.

NAVIGABLE STREAMS. DAMS. The Board of Supervisors is not precluded from granting further permits for the construction of dams in a navigable stream by reason of the fact that it has already granted permits to construct dams in such stream.

The Board of Supervisors in granting a permit to construct a dam has authority to exact the payment to the county of a gross sum or an annual payment based upon a percentage of gross income.

No appeal lies from the Supreme Court of this State to the Supreme Court of the United States from the decision of the Supreme Court in the case of Attorney General vs. Grand Rapids-Muskegon Power Co., establishing the right of the company to maintain a certain dam in Muskegon River in Mecosta county.

February 2, 1911.

Mr. Arthur J. Butler, Prosecuting Attorney, Big Rapids, Michigan:

Dear Sir—I am in receipt of your letter of January 18th, with reference to the decision of the supreme court in the case of People ex rel., Attorney General vs. Grand Rapids-Muskegon Power Company, and requesting an opinion upon certain questions in relation thereto submitted by the board of supervisors of your county. The questions submitted are:

First, Have the supervisors of this county the right of appeal from the recent decision of the Michigan Supreme Court to the Federal Court and if so, must that appeal be had through the Attorney General of this State?

In reply to this question I would say that neither the State nor the county is entitled to a review of the decision of the Supreme Court of this State by the Supreme Court of the United States for the reason that no federal question was raised or could have been raised by the State in the quo warranto proceeding.

Second: May a re-hearing of this case be had on an amended complaint in the Supreme Court of our State on the motion of the Attorney General where such amended complaint will tend to show [that] the people suffer loss and damage by reason of the unlawful occupancy of this river by the Grand Rapids and Muskegon Power Company?

In reply to this question will say that any party to a suit or proceeding against whom a decision has been rendered by the Supreme Court may apply to that court for a re-hearing in the matter and the court in its discretion may grant or refuse the same. There must, of course, be a substantial reason given by the applicant for a rehearing of the case. The opinion handed down by the Supreme Court in this case covers all of the questions that could have been raised and it is my opinion that there is no substantial basis upon which to found an application to the court for a re-hearing. This question assumes that the occupancy of the river by the Grand Rapids-Muskegon Power Company is unlawful while the court has determined such occupancy to be lawful.

Third. Have the supervisors of this county, should they desire to grant permission to use the waters of this river, any relief from the condition now existing along the fifteen miles of this stream in this county, by reason of the right of flowage being owned and controlled by the Grand Rapids and Muskegon Power Company who neither make use of this right of flowage or permit other capital to do so. What is the remedy?

In reply to this question would say that the opinion of the court in this case is to be construed in connection with the facts involved therein. The question as to the power of the board of supervisors in granting other permits to construct dams was not involved in the case. I am of the opinion that nothing in that decision would prevent the board of supervisors from granting to other persons permits to construct other dams above that constructed by the Grand Rapids-Muskegon Power Company. That company has no exclusive right to occupy the entire river by reason of the construction and maintenance of the Rogers Bridge Dam. The board may grant other permits for the construction of dams notwithstanding the Grand Rapids-Muskegon Power Company owns a right of flowage of certain lands lying along the river. If such permission is given to other persons to construct dams, the question of the conflicting rights of the parties under their grants is a matter to be determined between the parties themselves and over which the board of supervisors has no control.

Fourth. In the face of the recent decision above referred to, can the board of supervisors maintain a suit in our circuit court in which they seek to show the illegal occupancy of the Muskegon river by the Grand Rapids and Muskegon Power Company by reason of non-fulfilling of contract, and as a result, the people suffer a loss and damage thereby?

In reply to this question would say that the matter having been determined by the Supreme Court, the Circuit Court of the County of

Mecosta would have no jurisdiction to entertain a suit or proceeding involving the same questions that were involved in the case instituted in the Supreme Court.

Fifth. Have the board of supervisors of Mecosta county the legal right under Section 12, Article 8 of the Revised Constitution to exact as a reasonable compensation, a continuous annual payment to accrue to the people of Mecosta county as a condition to be attached to the granting of a permit to any person to erect a dam in Muskegon river inside of Mecosta county.

In reply to this question would say that it is my opinion that the board of supervisors in granting a permit to construct a dam, under Section 12 of Article 8 of the revised constitution, would have authority to exact as a condition for granting the permit, the payment to the county of a sum in gross or a continuous annual payment based upon a percentage of gross income or some other similar basis.

Sixth. As I have already passed upon the question and as it seems to be the important one to me, I wish to ask, "Does said opinion settle the right of the Power Company to build the other two dams granted by said license? If so, what are their rights?"

In reply to this question would say that it appears from the record in this case that the Grand Rapids-Muskegon Power Company does not claim the right to construct the other two dams referred to in its permit and does not intend to construct the same. The opinion does not in so many words say that the company may not construct these dams, but it is impliedly stated that the board of supervisors had authority to fix the time within which the work was to begin, which if not complied with by the company would give the board authority to revoke the permit to construct such dams. I am of the opinion that the company has no right, either under the permit granted or under the decision of the court in this case, to construct either of the two dams.

As I understand it, these views are in accordance with your own opinion upon the several questions submitted, as stated by you at the conference we had on the 25th instant.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

JUDICIAL DISTRICTS. CONSOLIDATION. ELECTION OF JUDGES. SECTION 8, ARTICLE VII., MICHIGAN CONSTITUTION. Section 8, Article VII. of the Constitution providing that the Legislature may arrange the various circuits into judicial districts, but "no alteration or discontinuance shall have the effect to remove a judge from office" does not prevent the Legislature from changing a district after a judge is elected and before he takes office.

A judge is elected as judge of the circuit as constituted at the time he takes office.

Where judicial districts are changed or consolidated the Legislature may provide for a special election to elect judges of the newly constituted districts.

February 2, 1911.

Hon. John Vanderwerp, State Senator, Capitol, Lansing:

Dear Sir—I have your communication of January 28th relative to the bill which you have introduced for the purpose of reducing the number of judicial circuits of this State. It is understood that this bill provides among other things for the consolidation of certain circuits and also for attaching one county of one circuit to another circuit. You ask:

“1. Would the clause in the section above quoted that ‘no such alteration or discontinuance shall have the effect to remove a judge from office’ prevent the changing of a district by a law taking effect after a judge is elected and before he takes office? In other words, should a judge be elected next April in the twenty-third district and also in the twenty-sixth district, would a law passed by this legislature consolidating these two districts and taking effect after the election in April, be within the prohibition of Section 8 and in that way remove the judges from office?”

2. What effect would an election of a circuit judge held next April in the eleventh circuit as now constituted have upon such circuit, provided my bill became a law to take effect ninety days after the close of legislature, the new law providing that Mackinac county be added to the eleventh circuit?

3. If this bill be enacted into a law, would it not be feasible and constitutional to enact another law providing for a special election for circuit judges in districts changed or added to by the present legislature, such election to take place at some time after these laws should take effect?”

In reply thereto would say Section 8 of Art. VII of the Constitution provides, in part, that:

“The legislature may by law arrange the various circuits into judicial districts and provide for the manner of holding courts therein. Circuits and districts may be created, altered or discontinued by law but no such alteration or discontinuance shall have the effect to remove a judge from office.”

Section 9 of the same article provides, in part, that:

“Circuit judges shall be elected on the first Monday in April, nineteen hundred eleven, and every sixth year thereafter. They shall hold office for a term of six years and until their successors are elected and qualified.”

It will be observed from the foregoing that the legislature possesses the unquestioned right to create, alter or discontinue judicial circuits and districts. The only act prohibited is that in such creation, alteration or discontinuance a judge shall not be removed from office. Circuit judges are required to be elected at the April election in 1911. Those persons elected to the office of circuit judge at the April election of 1911 are not entitled to take office until January 1st, 1912. If your bill is passed it will become a law a number of months prior to the time at which the persons elected circuit judge at the April election can possibly take office. Were we to hold that since the bill to which you refer will not become a law until subsequent to the date of the election, that for this reason the legislature is precluded from creating, altering

or discontinuing a district or circuit on the ground that it would remove a circuit judge, it would mean that such law could not become operative for six years. It is my opinion that this is not a proper construction and that the legislature is only prohibited from enacting a law which shall have the effect to remove a judge actually holding office rather than a person elected to such office but not entitled thereto until subsequent to the time the law becomes operative. It is therefore my opinion in answer to your first question that if judges are elected at the April election in districts which subsequently are consolidated by legislative act, such act does not have the effect of removing a judge from office and is therefore not subject to constitutional objection.

In answer to your second inquiry would say that a circuit judge for the 11th circuit will be elected at the April election. If subsequent to his election a new county is added to such circuit, it would not in any wise interfere with his election. He is elected as judge of the circuit as constituted at the time he takes office.

In answer to your third inquiry would say I am inclined to believe that if the various judicial districts are changed or consolidated the legislature may very properly provide for a special election to elect judges of the newly constituted districts.

The copy of the bill in question is herewith returned.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

DRAIN COMMISSIONER. A county drain commissioner holding office December 31, 1910, is entitled under the provisions of Act 118 of the Public Acts of 1909 to hold office until his successor is elected and qualified.

February 2, 1911.

Mr. John Garvin, County Clerk, Ontonagon, Michigan:

Dear Sir—We are in receipt of your letter of January 17th, in which you state that no county drain commissioner was elected in your county in November, 1910, and requesting the opinion of this department as to whether a vacancy exists which may be filled by the county clerk, judge of probate and prosecuting attorney, under the provisions of chapter 2 of Act 118 of the Public Acts of 1909.

In reply thereto will say that section 2 of this chapter provides:

"All county drain commissioners holding such position on December 31, 1909, shall continue to be such commissioners until their respective successors are *elected* and qualified, in accordance with the provisions of the foregoing section."

Section 1 provides, in part:

"In case of a vacancy occurring in the office of county drain commissioner for any cause the same shall be filled as soon as practicable thereafter by the appointment by majority vote of the county clerk, prosecuting attorney and judge of probate of the county, of which appointment they will file their certificate under their hands and seals in the office of said county clerk."

It is the general rule, in the absence of a statute indicating a contrary intention, that a vacancy exists only when there is no person qualified by law to perform the duties of the office. Under the provisions of Section 2, above quoted, the county drain commissioner holding office December 31, 1910, is not only qualified to hold the office but is entitled to hold it until his successor is *elected* and qualified. It seems to us, therefore, that there is no vacancy which the county clerk, judge of probate and prosecuting attorney are entitled to fill. We assume that the commissioner who held office on December 31, 1909, is still holding and performing the duties of the office.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CORPORATIONS. A corporation under the name of Ford Motor Company of Michigan cannot be organized while there is a Michigan corporation in existence known as the Ford Motor Co.

February 2, 1911.

Mr. John W. Anderson, Attorney-At-Law, 622 Moffatt Building, Detroit, Michigan:

Dear Sir—In reply to your letter of January 24th, I enclose you herewith copy of an opinion given by Attorney General, John E. Bird to the Secretary of State, under date of April 19, 1910, which discusses the question of similarity of names of corporations.

This opinion accords with my views upon the subject. The statute in question is one for the protection of persons dealing with the corporations involved, as well as for the protection of the corporations themselves. In view of the above, we would be inclined to advise the Secretary of State that articles of a company under the name of the Ford Motor Company of Michigan should not be received while there is such a corporation in existence as the Ford Motor Company.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o-encl.

LIQUOR LAW. The sale of a retail liquor business during the license year constitutes a voluntary surrender within the meaning of the Warner-Cramton Law.

February 2, 1911.

Mr. F. S. Puller, Village Clerk, Belleville, Michigan:

Dear Sir—We are in receipt of your letter of January 30th, in which you state "at present there is in our village one saloon owned and operated by William Mandt; also another owned by George Trotter and operated by William Anderson under the old George Trotter license, but on the coming May first the above William Anderson will make application for a license under his own name." The point in question is will the place become a new place under the present law.

We are at a loss to understand just what you mean by your inquiry. If Anderson purchased Trotter's business and is undertaking to operate under Trotter's license, he is, of course operating in violation of law and Anderson has voluntarily surrendered his license in accordance with an opinion given by this department to Harry A. Rietdyk, under date of September 29, 1909, a copy of which is herewith enclosed. Under this state of facts, if the population of Belleville is less than 1,000 the council would not be authorized to issue but one license for the year beginning May 1, 1911. If, however, Trotter is still operating the saloon and continues to operate it until May 1st, the village would be required to grant two licenses.

The same situation would arise with respect to section 37 prohibiting the establishment of a "new bar or saloon having its front entrance within 400 feet along the street line from the entrance of a church or public school-house or any residence district," etc. If Trotter sold out his business and thus surrendered his license and a new license was not issued for the same place, that particular place ceased to be an established bar or saloon and the council would be without authority to issue a new license for that place unless the provisions of section 37, relative to the consent of property owners were complied with.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

LIQUOR LAW. Where there is one saloon only in a town having a population of 699, the council would have authority to grant but one license in May, 1911.

February 2, 1911.

Hon. N. L. Field, Representative Hall, Capitol, Lansing:

Dear Sir—Replying to your letter of January 21st will say that if the population of DeTour is 699 according to the last census and if there is only one saloon now in business there the council would have authority to grant but one license, under the provisions of section 39 of the general liquor law.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CORPORATIONS. CHIROPRACTIC. A corporation may not be organized under the provisions of Act 108 of the P. A. of 1893 to teach and practice the science of Chiropractic Spondylotherapy.

Corporations cannot be organized under Act 108 of the Public Acts of 1893; unless it is stated that the treatment of disease is to be administered by legally qualified physicians.

February 2, 1911.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of January 19th, in which you enclose articles of association of the Detroit School of Chiropractic Spondylotherapy, which proposes to incorporate under the provisions of Act 108 of the Public Acts of 1893, sections 2486 et seq., Compiled Laws of 1897. The purposes of the corporation are stated as follows: "The teaching and practice of the science of Chiropractic Spondylotherapy." You ask whether a corporation organized for the purposes set forth in these articles can properly be organized under the provisions of Act 108 of the Public Acts of 1893.

In reply thereto will say that it is our opinion that you should not receive articles under this act in which the purpose is stated as above. The words "Chiropractic Spondylotherapy" have acquired no such definite meaning that it can be said that they are within the purposes for which corporations may be organized under Act 108 of the Public Acts of 1893. The question of whether corporations may be organized under this act for the carrying on of institutions for the treatment of disease where the treatment is to be administered by other than legally registered physicians, under Act 237 of the Public Acts of 1905, as amended, or registered Osteopaths, under the provisions of Act 162 of the Public Acts of 1903, is not altogether free from doubt.

In the case of *People vs. Woodbury Dermatological Institute*, 192 N. Y. 454, which was a prosecution of a corporation for practicing medicine under a statute which provided that "any person not registered as a physician who shall advertise to practice medicine shall be guilty of a misdemeanor" the argument was advanced that if this statute was held to apply to a corporation it must be held also to apply to hospitals and infirmaries organized under the Membership Corporations Law. The Membership Corporations Law provided that "the system of medical practice or treatment to be used or applied in such hospitals, infirmary, dispensary or home may be specified in the certificate." In passing upon this question the court said:

"Thus, a hospital duly incorporated under the Membership Corporations Law unquestionably holds itself out as being able to diagnose, treat, operate and prescribe for human disease, pain, injury, deformity or physical condition; and such corporations do in fact offer and undertake publicly and frequently through the agency of advertisements to diagnose, treat, operate and prescribe for such diseases. An institution of this character, possessing legislative authority to practice medicine by means of its staff of registered physicians and surgeons, comes under the direct sanction of the law in so doing, and by the plainest implication under well-settled rules of statutory construction relating to enactments

dealing with the same general subject-matter are excepted from the operation of the act of 1907 under which the defendant was convicted."

It is a fair implication from the language of the above opinion that hospitals organized under the Membership Corporations Law cannot administer treatment except through the medium of registered physicians. The legislature of this State has recognized and provided for the licensing of the practice of medicine and surgery and the practice of Osteopathy and we think it can be said that by so doing the legislature has established a rule of public policy which would preclude the organization of a corporation for the treatment of disease by practitioners not registered under the medical or osteopathic laws.

In the case of the New York Mortgage Company vs. Secretary of State, 150 Mich. 197, the Supreme Court refused to grant a mandamus to compel the Secretary of State to issue a certificate of authority to a foreign corporation to conduct a banking business on the ground "that the legislature has in its wisdom for the protection of its citizens put such business under official supervision, care and control." For like reasons the Supreme Court has held that by reason of the various statutes for the incorporation of insurance companies, the insurance business can be carried on only by duly authorized companies.

People vs. Howard, 50 Mich. 237.

American Insurance Co. vs. Stoy, 41 Mich. 401.

Seamon vs. Temple Company, 105 Mich. 400.

We think that you may properly require corporations organizing under the provisions of Act 108 of the Public Acts of 1893 to state as a part of the purposes of their incorporation that the treatment of disease is to be administered by legally qualified practitioners under the laws of this State.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

SCHOOL OFFICERS. CONTRACTS. The contract with an insurance agency for insurance upon school buildings in which some of the incorporators are members of the school board is invalid.

February 2, 1911.

Mr. R. E. Beach, Crystal Falls, Michigan:

Dear Sir—Your letter of the 23d instant received. Therein you state the following proposition:

"Three men, A., B. and C. and others incorporate as a national bank. This bank has an insurance department, taking their licenses, in the name of A. Agent, profits forming a part of the income of the bank. A., B. and C. are elected to the board of education, meanwhile writing 95% of the school insurance of the district amounting to \$55,000 on the main building. Superintendent of Public Instruction and others advise that it is illegal, being a violation of Section 4773 of the Compiled Laws.

In order to avoid the illegality, these bank stockholders, A., B., C. and others, organize the A. Insurance Agency Limited, and incorporate,

naming the wives of A., B., C. and some of the other heavier stockholders as the incorporators.

Query: Is this business on the schools now legally written, or would the writing by the A. Ins. Agcy. Ltd. be prima facie invalid?

Could the books of the bank be forced into court as a means of proving that the school officers (being A., B. and C.) of the bank are still interested in the insurance written by the bank?"

Under the above statement of facts we believe that the insurance on the school as above mentioned is illegally written. Section 4773 Compiled Laws of 1897, reads:

"No school officer, superintendent or teacher of schools shall act as agent for any author, publisher or seller of school books or shall directly or indirectly receive any gift or reward for his influence in recommending the purchase or use of any library or school book or school apparatus or furniture whatever, nor shall any school officer be personally interested in any way whatever in any contract with the district in which he may hold office. Any act or neglect herein prohibited, performed by any such officer, superintendent or teacher shall be deemed a misdemeanor."

In an opinion rendered to T. P. Zander, St. Charles, Michigan, a copy of which is herewith enclosed, this department passed upon the legality of a transaction whereby an officer of a school district writes insurance on school property in his district. It was held that such a transaction was illegal and that one engaged therein would be liable to prosecution for so doing.

In this case A., B. and C. are members of the board of education, they are stockholders in the national bank before mentioned, that bank maintains an insurance department which writes insurance on the schools in the district wherein A., B. and C. are school officers. This is plainly prohibited by law above quoted. In an endeavor to obviate this difficulty, A., B. and C. organize another insurance company naming their wives among others as incorporators and transferring the insurance to this company. It is our view that any insurance written by the second company on the school property of the district in which A., B. and C. are school officers constitutes just as illegal a transaction as the one first engaged in. We are left with the impression that in the organization of the second company, the wives of A., B. and C. are simply ostensible incorporators while A., B. and C. themselves are the real incorporators. Whether A., B. and C. or their wives are incorporators of the second company, nevertheless A., B., and C. are interested in said company and are estopped from legally writing insurance on the school property in their district. We do not believe that the subterfuge above detailed would avail to validate the contract of insurance in the face of the statute prohibiting for obvious reasons of public policy a transaction whereby three men holding positions of trust in a school district can create business for themselves in another capacity by placing a contract of insurance with a company in which they are financially interested.

With reference to your query as to whether the books of the bank can

be forced into court to prove that the school officers (A., B. and C.) and bank incorporators are still interested in the insurance company, we are of opinion that they could.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

VACANCIES. COUNTY COMMISSIONER OF SCHOOLS. Vacancy in the office of county commissioner of schools of Livingston county by reason of Act 592, Local Acts of 1905 to be filled by special election at the order of the board of supervisors.

February 2, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—Your communication of the 23d instant enclosing letter of Mr. Harry E. Reed, received. Mr. Reed states that a vacancy exists in the office of county commissioner of schools of Livingston county. Mr. Grocinger, the late commissioner was elected to succeed himself at the recent election in November, 1910. His term of office at the time of his death would have expired July 1st, 1911, at which time his new term for which he was elected last fall would have commenced. Mr. Reed desires to know how and when the commissioner for the next two years beginning July 1st, 1911, is to be elected.

Relative to vacancies in the office of county commissioner of schools of Livingston county, Section 9 of Local Act 592 of the Local Acts of 1905, reads:

“Whenever, by death, resignation, removal from office or otherwise, a vacancy shall occur in the office of county school commissioner, county school examiners, county drain commissioner or superintendents of the poor, the judge of probate for the county of Livingston shall appoint a suitable person to fill the vacancy for the unexpired portion of the term of office.”

Thus the probate judge of Livingston county is authorized to appoint a suitable person to fill the remainder of the unexpired term, namely until July 1st, 1911. No provision is made in the local act for filling the vacancy which would occur at that time.

However, we believe that the general act covering special elections applies here. Section 3596 of the Compiled Laws of 1897 reads as follows:

“Special elections may be held in the following cases, and for the election of the following officers, namely:

1. When a vacancy shall occur in the office of senator or representative in the State legislature, representative in congress, judge of the circuit or district court, regent of the university or member of the State board of education;
2. When there has been no choice at a general election of representative in congress;
3. When the right of office of a person elected to any of the afore-said district or county offices shall cease before the commencement of the term of service for which he shall have been elected;

4. When a vacancy shall occur in either of the said county offices after the commencement of the term of service, and more than six months before the next general election;

5. When in any other case of a vacancy not particularly provided for in this section, the Governor shall, in his discretion so direct."

It is our view that Subdivision 3 of the above section covers this case. The district and county offices therein referred to are those enumerated in the preceding section, (3595 Compiled Laws of 1897) and are the offices to be filled at the election held on the Tuesday succeeding the first Monday in November. Since by Local Act 592 of 1905 the office of county commissioner of schools of Livingston county is designated as one of those to be filled at the regular biennial fall election, we are of opinion that the board of supervisors should order a special election under the provisions of Section 3596 of the Compiled Laws of 1897. See also case of *People v. Lord*, 9 Mich. 226.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

Head-note—See preceding letter to Hon. L. L. Wright.

February 2, 1911.

Mr. William E. Robb, Prosecuting Attorney, Howell, Michigan:

Dear Sir—Your communication of the 25th instant at hand. Therein you state that your commissioner of schools recently died and that the judge of probate has appointed a successor according to the provisions of Act 592 of the Local Acts of 1905. The late commissioner was re-elected last fall, his new term to commence July 1st, 1911. You ask if it will be necessary to elect a commissioner of schools for the full term at the election held the first Monday in April. Also, you ask if the candidates for the office of commissioner should be nominated by the convention or primary system.

In reply would say that the board of supervisors should order a special election to elect a commissioner to serve two years from and after July 1st, 1911, according to the provisions of Section 3596 of the Compiled Laws of 1897. In the nomination of candidates the convention system should be used.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

BOARD OF SUPERVISORS. LOCAL ACT. KILLING OF DEER.

Local act passed by the board of supervisors relative to the hunting and killing of deer is void.

February 2, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing, Michigan:

Dear Sir—I have your communication of January 26th enclosing proposed act passed by the board of supervisors of Montmorency county, relative to the hunting and killing of deer in said county. You ask for my opinion concerning your powers and duties in relation to this matter.

In reply thereto would say it is evident that the act of the board of supervisors in question was passed under authority of Section 11 of Act 322 of the Public Acts of 1909. The identical question presented was passed upon in an opinion rendered under date of March 9, 1910, by ex-Attorney General John E. Bird, directed to Governor Warner, in which it was held that Section 11 of Act 322 of the Public Acts of 1909 was unconstitutional. This opinion is to be found on page 208 to 212 inclusive, of the report of the Attorney General for 1910. I believe the conclusion therein reached is correct and I adopt the reasoning therein used. Accordingly, it is my opinion that the act upon the part of the board of supervisors of Montmorency county is absolutely void.

The proposed act is herewith returned.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

MARRIAGE, SOLEMNIZATION OF. A non-resident minister is not authorized to solemnize marriages unless he is "continuing to preach the gospel in this State."

February 2, 1911.

Rev. E. Wenk, 2515 Stickney Ave., Toledo, Ohio:

Dear Sir—Your communication of the 24th inst. received. Therein you state that you are a regularly ordained minister of the Lutheran Church, that you reside in Toledo, Ohio, and have a congregation in that city. You further state that you formerly served a congregation in Jackson county, Michigan, which congregation is at present without a pastor and that you preach there once in a while and have officiated there at funerals. You say you were asked to perform a marriage ceremony in said Jackson county, Michigan on February 22d of this year and you inquire whether you can legally do so.

The Michigan law on this subject is as follows:

Section 7 of Act 235 Public Acts of 1909. "Marriages may be solemnized by any justice of the peace or judge of probate in the county in which he was chosen, or judge of a municipal court in the municipality in which he was chosen, and they may be solemnized throughout the State by any minister of the gospel who has been ordained or authorized to solemnize marriages according to the usages of his denomination, and who is a pastor of any church or churches in this State, or who shall

continue to preach the gospel in this State: Provided, That all non-resident ministers of the gospel, who are authorized by this act to solemnize marriages, shall keep proper records and make returns as required by Section two, of chapter sixteen of the Compiled Laws of eighteen hundred seventy-one."

Non-resident ministers who preach the gospel in Michigan and shall actually continue to do so in good faith are authorized under this act to solemnize marriage in this State.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

CITIES AND VILLAGES. FRANCHISES. No express method provided for submitting question of granting franchises in cities and villages.

February 2, 1911.

Mr. Fred W. Walker, Village Attorney, Otsego, Michigan:

Dear Sir—I have your communication of February 1st, in which you ask whether there is any provision in the general law, relating to cities and villages, indicating the manner in which the question of granting franchises shall be submitted to the people.

In reply thereto would say I do not find that any provision is expressly provided for. The constitution, Section 25, Article VIII, provides, however, that a city or village shall not acquire any public utility or grant any public utility or franchise which is not subject to revocation at the will of the city or village unless the proposition has received the affirmative vote of three-fifths of the electors thereof. It is possible that a city or village could by ordinance or amendment of its charter provide the method for taking this action. In the absence of an amendment to the charter there is some question just what course should be pursued in submitting such proposition to the electors. It would seem that the question presented by you would be a proper one to be considered by the legislature.

Yours very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

PUBLIC DOMAIN COMMISSION. Has no jurisdiction over navigable waters flowing through lands under its jurisdiction with respect to their use for power purposes.

February 8, 1911.

Mr. Glen R. Munshaw, Acting Secretary of Public Domain Commission, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the 4th. inst., enclosing letter from E. W. Chandler of Rockford, Ill. in relation to the granting of authority to utilize the water of a certain stream which is the outlet of Fife Lake in Grand Traverse county for power purposes.

In this connection you also call my attention to Section 4 of Act 280 of the Public Acts of 1909, and request my opinion as to the authority of the Public Domain Commission to grant water power rights on streams flowing through lands under the control of the Public Domain Commission.

In reply thereto I call your attention to Section 14, Article 8 of the Constitution which reads as follows:

"No navigable stream of this State shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and the municipalities therein. No such law shall preclude the State from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof."

This constitutional provision would clearly prohibit the Legislature from granting to the public Domain Commission jurisdiction over navigable waters with respect to their use for power purposes.

From an examination of the Act creating the Public Domain Commission it is my view that the Legislature did not contemplate granting any such power to the Public Domain Commission with respect to streams flowing through lands under its jurisdiction.

Section 4 of Act 280 of the Public Acts of 1909 in part reads as follows:

"Said Commission shall have power and jurisdiction over and have the management, control and disposition according to law of the public lands, forest reserve and forest interests, and all the interests of the State in connection with stream protection and control, forest fire protection, and all matters within the jurisdiction, custody and control of the Michigan Forestry Commission, and all the authority and discretion vested in them by law are hereby transferred to and vested in the Public Domain Commission aforesaid," and etc.

In Section 2 of Act 227 of the Public Acts of 1899, under which Act the Forestry Commission of the State of Michigan was created, and its powers and duties defined, such Forestry Commission was directed to institute an inquiry as to the extent, kind, value and condition of the timber lands of the State, the amount of acres and value of timber that is cut and removed each year and the purposes for which it is used, etc. The said Commission was also authorized to inquire as to the affect of the diminution of timber and wooden surfaces of this State in lessening the rainfall and producing droughts and the effects upon the ponds, rivers, lakes and the water power and harbors of the State and affecting the climate and distributing and deteriorating natural conditions.

While it is not exactly clear what was meant by the words "stream protection and control" as found in Section 4 of Act 280, it was evidently the intention of the Legislature to refer to fishing rights or to the protection of such streams by way of forestration along the line of the investigation required to be made by the Forestry Commission under Section 2 of Act 227 of the Public Acts of 1899.

No distinction is made in the Act of 1909 with respect to navigable or non-navigable streams.

I would therefore advise you that in my opinion the Public Domain

Commission is not authorized to grant the request of Mr. Chandler as outlined in his communication of the 28th. ult.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

M-p-o.

VILLAGES. A village clerk is not required to publish a statement of receipts and disbursements in a newspaper where none is published in the village.

February 8, 1911.

Mr. J. J. Kelly, Village Olerk, Tower, Michigan :

Dear Sir—Replying to your letter of February 3d, will say that Section 2736 of the Compiled Laws of 1897, Section 53 of the Village Laws, provides that the village treasurer shall exhibit to the council on the first Monday in March, a full and detailed account of the receipts and disbursements of the treasurer since the date of his last annual report, "which account shall be filed in the office of the village clerk and shall be published in one of the newspapers of the village, if any be published therein."

Under this provision, it is our view that if no newspaper is published in the village, the village clerk would not be required to publish an account of the receipts and expenditures in a newspaper.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

DRAIN COMMISSIONER. County drain commissioner elected who has not taken the oath of office has not qualified and his predecessor continues to hold the office.

February 8, 1911.

Mr. Asa K. Hayden, Prosecuting Attorney, Cassopolis, Michigan :

Dear Sir—Your letter of recent date received. Therein you state that one William H. Stretch was elected to the office of county drain commissioner of Cass county last November. Before January 1st, 1911, he was compelled to leave the county for the South. He prepared and filed his bond, but forgot to take and subscribe his oath of office. You ask if he is county drain commissioner and if he may now consummate the act of qualifying for office by filing the necessary oath with the county clerk. You further state that Mr. Stretch does not intend to return until May 1st of this year and that under the circumstances a deputy should be appointed. You quote Section 1 of chapter 9 of Act No. 118 of the Public Acts of 1909, and ask if this means that a deputy cannot be appointed without the approval of the board of supervisors or if their approval is necessary only when more than one deputy is appointed.

Referring to your first question would call your attention to Section 1 of Chapter 2 of Act No. 118 of the Public Acts of 1909 which reads, in part:

"Such county drain commissioner, whether elected or appointed to fill a vacancy, before entering upon the duties of his office, shall take, subscribe and file with the county clerk the constitutional oath of office, and shall also within the same time execute and file with such county clerk a bond to the People of the State of Michigan in the penal sum of ten thousand dollars with two or more sufficient sureties, to be approved before filing by the county clerk, county treasurer and judge of probate, conditioned upon the faithful discharge of the duties of his office."

Thus before the county drain commissioner-elect can enter upon and assume the duties of his office he must qualify by taking, subscribing and filing with the county clerk the constitutional oath of office and by executing and filing with said clerk a bond, etc. Therefore, since Mr. Stretch has never taken his oath of office, although he has filed his bond, he has not qualified according to law and therefore is not county drain commissioner. Section 2 of Chapter 2 of Act 118 aforesaid, reads:

"All county drain commissioners holding such office on December thirty-first, nineteen hundred nine shall continue to be such commissioners until their respective successors are elected and qualified in accordance with the provisions of the foregoing section."

Therefore the incumbent in the office of county drain commissioner at the time Mr. Stretch was elected has rightful title to the office at the present time and such title will continue to reside in him until his successor is duly elected and qualifies. Mr. Stretch has been elected but has not qualified. Therefore his predecessor still holds office. It would seem that Mr. Stretch may now complete his act of qualifying by taking, subscribing and filing his oath according to law.

Relative to your second question, it is plain that since Mr. Stretch has not consummated his title to the office he cannot appoint deputies. However, when he shall have perfected his title to said office, in our view, he may appoint such deputy or deputies as the board of supervisors may approve. Section 1 of Chapter 9 of Act 118 aforesaid reads, in part:

"Any county drain commissioner may appoint a deputy or deputies, as the board of supervisors may approve, and revoke such appointment at pleasure, such appointment to be made in writing and filed with the clerk of the county; and whenever by reason of sickness, absence or sufficient cause, the county drain commissioner shall be unable to execute the duties of his office, such deputy or deputies shall execute the same until such disability shall be removed."

We are of the opinion after considering the above that the deputy or deputies appointed by the county drain commissioner must receive the approval of the board of supervisors of the county wherein they are appointed.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

LEGISLATURE. VACANCY. Vacancy in legislature should be filled at special election to be called by the Governor.

February 8, 1911.

Mr. Thomas H. George, Prosecuting Attorney, Port Huron, Michigan:

Dear Sir—I have your communication of February 7th, in which you ask to be advised as to the proper procedure to fill the vacancy in the legislature caused by the death of a member of the House of Representatives.

In reply thereto would say section 3596 of the Compiled Laws of 1897, especially provides for a special election when a vacancy shall occur in the office of representative in the State Legislature. It will be necessary for the Governor to call a special election. When this is done the general provisions of law will be governing.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

SCHOOL LAW. RIGHT OF SOLDIER WHOSE PROPERTY IS EX-EMPT TO VOTE. Soldier whose property does not exceed \$1,200 which is exempt is not a qualified voter on the question of raising money at a school election.

February 8, 1911.

Mr. Ethol W. Stone, Prosecuting Attorney, Allegan, Michigan:

Dear Sir—I have your communication of February 6th, in which you ask if a soldier whose property is real estate only and does not exceed in value \$1,200 and has declared his exemptions from taxes, by reason of being a soldier, is entitled to vote at a school meeting in his district on the question of raising money.

In reply thereto would say Section 43 of the pamphlet of general school laws, revision of 1909, provides in part that:

“On the question of voting school taxes every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district * * * shall be a qualified voter.”

It will be observed that one of the requirements is that the person who wishes to vote must own property assessed for school taxes in the district. A soldier whose only property is real estate which does not exceed in value \$1,200 and who has declared his exemptions from taxes, does not own property which is assessed for school taxes in the district. It is, therefore, our opinion that in the case which you suggest the person is not a qualified voter on the question of raising money.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

LIQUOR LAW. An administrator is not entitled to carry on the retail liquor business belonging to deceased for the balance of the license year.

The death of a person holding a retail liquor dealer's license is not a voluntary surrender.

February 8, 1911.

Mr. Fred Engel, Dundee, Michigan:

Dear Sir—We are in receipt of your letter of February 1st, in which you state that Mr. Frank Wahl, deceased, was engaged in the retail liquor business at Dundee, that you have been appointed administrator of his estate and you inquire whether it will be necessary for you to take out a new license for the balance of the unexpired year, also whether you may continue in business in your own name after May 1st, provided your bonds are accepted by the village council.

In reply thereto will say that you are not entitled to carry on the business of Mr. Wahl for the balance of the year. As the law now stands you are not entitled to carry on the business at all as administrator. A bill has been introduced at this session of the legislature to provide that an administrator may carry on the business for the balance of the license year on permission of the court and upon filing a new bond. This bill, however, has not as yet been enacted into a law.

We know of no reason why you should not be entitled to carry on the business in your own name upon obtaining a proper license therefor, after May 1st of this year. This department has held that the death of a person licensed to carry on the retail liquor business does not constitute a voluntary surrender of the license so as to cut down the number of saloons which may be licensed in the village in case there is more than one to every 500 population.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CONSTITUTIONAL LAW. JUSTICES OF THE PEACE. The Legislature has no authority to materially curtail the jurisdiction of justices of the peace in matters of ordinary civil jurisdiction.

February 8, 1911.

Messrs. Guy A. Miller, and Charles E. White, State Senators, Senate Chamber, Capitol:

Gentlemen—We have given careful consideration to your letter of January 26th, in which you refer to Sections 15 and 16 of Article VII of the revised constitution, relative to the election and jurisdiction of justices of the peace, and request an opinion of this department on the following questions:

Is it legally possible, in view of these constitutional provisions, to repeal the existing justice court act and to create a county court which shall have jurisdiction over all civil cases up to \$500.00 in amount?

Does the clause "with such exceptions and restrictions as may be provided by law," permit the creation of a court having concurrent jurisdiction below the amount of \$100.00?

In reply to these inquiries will say that the following are expressions of the Supreme Court in cases involving legislative enactments which undertake to deprive constitutional officers of their functions and duties.

In the Matter of Head Notes, 43 Mich. 641, the legislature attempted to turn over to the judges of the Supreme Court the duties of preparing head-notes to their reported decisions and the court in passing upon this enactment said:

"Article VI, Section 10 of the Constitution gives the Supreme Court power to appoint a Reporter of its decisions. At the time the Constitution was framed, and adopted by the people, the duties of Reporter of the decisions of a court were, and from time immemorial had been, well known. In providing in the Constitution for such an officer, the usual and customary duties were contemplated as belonging to the office and inseparably connected therewith; so well was this understood that they were neither pointed out in that instrument, nor were they, as in many other cases, left to be prescribed by the Legislature. That the duties pertaining to that office may be defined, enlarged or diminished by the legislative department, in many respects, we do not question, but the essential duties cannot be taken away, as this in effect would result in the abolishment of the office, a power not within the province of the Legislature. At present and for some time, it has been customary for the judges in preparing their opinions, to incorporate therein a statement of the facts. Should the Legislature at some future time require the judges to prepare such statement, which clearly might be done if the present act is valid, there would then be nothing of importance remaining of an intellectual character for a Reporter to perform, beyond the capacity of an ordinary proof-reader. The office could thus in separate acts be deprived of its dignity and importance, and its abolishment might then follow as a matter of course."

In the case of *Davies vs. Board of Supervisors*, 89 Mich. 295, the Legislature attempted to place a control of the highways in Saginaw county in the hands of the board of Saginaw Road Commissioners and the court said:

"The functions of township officers who are continued by Constitutional enactment are as clearly within the contemplation and protection of the Constitution as are the officers themselves, and the Legislature has no more power to deprive those officers of their authority, and confer that authority upon officers not of local selection, than it has to abolish the offices. It is just as essential to local self-government that the functions of elective officers be preserved to such officers as that the right of election be protected; indeed, it is the local management of local concerns, by and through the medium of officers of their own selection, that is sought to be protected. Strip the officers of a municipality of their functions, and you rob the municipality of its vitality." (Page 298.)

In *Hubbard vs. Township Board of Springwells*, 25 Mich. 153, involving the power to take away the duties of a township highway commissioner, the court said:

"This street, being a public highway, was by law put under the charge of the local authorities. The constitution (Art. XI, Section 1) requires an election every year of a township commissioner of highways, and of an overseer of highways, for every highway district. Their powers were subject to legislative modification, but no legislation could abolish the offices, or take away all their functions. The highways in each district must be, to some extent at least, subject to an overseer elected by the people. As we held in the case of the Detroit board of public works (24 Mich. 44), the regulation of the township affairs, legally concerning none but the people of the town, can not be lawfully vested in any officers imposed upon the township from without."

In *Averill vs. Perrott*, 74 Mich. 296, the court construed an act conferring upon the police justice of Bay City exclusive and original jurisdiction to hear, try and determine all criminal cases wherein the crime, misdemeanor or offense charged shall have been committed within the corporate limits of Bay City, and the court in holding a portion of this act unconstitutional, said:

"We think that portion of the act which deprives justices of the peace of jurisdiction as conservators of the peace, as it was held and recognized when the Constitution of 1850 took effect, is void and of no effect. Article VI, Section 19, declares that justices of the peace and other officers therein named shall be conservators of the peace within their several jurisdictions. This authority it is not within the province of the Legislature to deprive them of. As such conservators, they had, when the Constitution took effect, the authority to apprehend offenders against the criminal laws of the State, and to hold examinations, and commit, bind over, or hold to bail, as well as other authority exercised by conservators of the peace." (Page 298.)

In *Allen vs. Kent* Circuit Judge, 37 Mich. 473, it was attempted to give the Superior Court of Grand Rapids jurisdiction of appeals from the justice court of that city and in passing upon this question the court said:

"Under ordinary circumstances we should pause here and leave the important question of constitutional authority untouched; but as the question has been fully presented, and it seems to us very clear, it is perhaps proper for us to add that we have been unable to understand on what ground it can be claimed that the supervisory authority of the circuit courts over justices' courts, which is so specifically given by the Constitution, can be taken away by legislation. Both these classes of courts are constitutional courts, and so far as any jurisdiction is conferred upon either by the Constitution, it is beyond the reach of the legislative power. In several particulars the jurisdiction of each is defined by the Constitution, but in respect to none is that instrument more specific than in placing the circuit court as an appellate tribunal over the justices' courts, and in giving it a supervisory control. While it may be and has been claimed that the appellate jurisdiction still remains, though some cases are removed from its scope, there can be no plausible argument, as we think, that the supervisory control is left unimpaired when as to a large class of cases it is wholly superseded, and the control conferred upon another tribunal. Any reasoning that would support such legislation would justify a like apportionment of the pro-

bate jurisdiction between the constitutional probate court and the municipal courts of legislative creation."

In *State Tax Commissioners vs. Board of Assessors*, 124 Mich. 491, at page 496, the court held that the statute giving the power of assessment to the State Tax Commissioners was not unconstitutional in depriving the supervisor of his constitutional duties, and in passing upon this question the court said:

"There is nothing in the title of the office, as used in the Constitution, to indicate that he is to be given any authority to make assessments; and not only might this right in large part be taken from him by the electors, but he had many additional functions. He was an inspector of elections; he presided at meetings of the township board; he classified justices of the peace, he was a member of the board of supervisors; it was his duty to prosecute for penalties and to suppress riots. In the exercise of some of these duties he was doubtless distinctively a representative of his township, and there may be duties of that character which cannot constitutionally be withdrawn from him; but we do not deem the making of an assessment roll one of them. It was not distinctively a matter of local concern."

The Supreme Court has recognized the right of the legislature to take away the jurisdiction of justices in matters involving less than \$100.00 and confer it upon circuit courts under the provisions of the Constitution of 1850, which provided, as does the present constitution that:

"In civil cases, justices of the peace shall have exclusive jurisdiction to the amount of one hundred dollars, and concurrent jurisdiction to the amount of three hundred dollars, which may be increased to five hundred dollars, with such exceptions and restrictions as may be provided by law. They shall also have such criminal jurisdiction and perform such duties as shall be prescribed by the legislature."

In *Milroy vs. Spurr Mountain Iron Mining Company*, 43 Mich. 231, involving the validity of an act permitting proceedings in circuit court for the collection of labor debts against corporations, it was said:

"The Constitution does not prohibit the Legislature from giving the circuit courts jurisdiction in cases where the amount claimed is less than one hundred dollars. The Constitution, Article VI, Section 18, gives to justices of the peace in civil cases exclusive jurisdiction to the amount of one hundred dollars. 'With such exceptions and restrictions as may be provided by law.' In suits between copartners and for the foreclosure of mortgages, the circuit courts in chancery are given jurisdiction by statute although the amount in dispute is less than one hundred dollars. 2 Compiled Laws 5059. So the circuit courts were given jurisdiction in claims against boats and vessels irrespective of the amount claimed, and other instances might be given."

In the case of the *Detroit Lumber Company vs. Yacht "Petrel"*, 153 Mich. 528, the court cites *Milroy vs. Mining Company*, supra, and holds that a statute giving a circuit court jurisdiction over amounts less than \$100.00, when seamen's wages were involved, was constitutional, the court saying on page 529:

"It is beyond question that the legislature has the power to confer jurisdiction upon the circuit court in cases involving any amount. Section 18, Article 6, of the Constitution, provides that in civil cases justices of the peace shall have exclusive jurisdiction to the amount of \$100

and concurrent jurisdiction to the amount of \$300 (which may be increased to \$500) with such exceptions and restrictions as may be provided by law. Any legislation, therefore, which clearly withdraws from the jurisdiction of the justices of the peace any cause is within the constitutional power of the legislature, and the only question presented is whether the water-craft law expresses with sufficient clearness the intention to repose in the circuit court jurisdiction of cases involving a lien against vessels without regard to the amount."

In *Allor vs. Wayne County Auditors*, 43 Mich. 76, which involved the constitutionality of the police act for the city of Detroit, it was said on page 100:

"The power of justices of the peace to try civil causes is so fixed by the Constitution that they are absolutely necessary magistrates in cities as well as elsewhere. Their power to try criminal offenders is statutory, but it is contemplated by the Constitution that it shall exist to some extent, and the general statutes have extended this jurisdiction to a large class of minor offenses, and it can only be restricted by the special municipal criminal jurisdictions in cities. A municipal court, could not be authorized to try extra-municipal crimes, and no attempt has ever been made to permit it. The result is the general statutes of the State give every justice in Detroit power to dispose of all criminal business within the county of Wayne arising beyond the city. Those same laws make constables competent and compellable to serve their criminal process, as the sheriff is also in some cases. *Compiled Laws, Chapter 179.*"

In *Attorney General ex rel. Hooper vs. Loomis*, 141 Mich. 547, which involved the constitutionality of the charter amendments of the City of Battle Creek providing for a municipal court, after discussing *Allor vs. Wayne County Auditors*, supra, the court said:

"Various other objections to the validity of this legislation suggest themselves. It has been many times declared by this court that the municipal corporations of the State are required to be organized in such a way as to preserve to the inhabitants full means of local self-government. The exercise of the judicial power within every community is one means of government. It may well be doubted if it is within the power of the Legislature to set up a community in which the powers and duties of justices of the peace shall have no recognition, and much that is said in *Allor vs. Wayne County Auditors* concerning constables would seem to apply to justices of the peace."

In discussing the powers of municipal courts established, under the provisions of Article VI, Section 1 of the Constitution of 1850, the court said in *People vs. Hurst*, 41 Mich. 328:

"We have already held that the Legislature need not confer both civil and criminal jurisdiction on the same court. *People ex rel. Covell vs. Treasurer of Kent County*, 36 Mich. 332.

We have also considered that there was no objection to giving them jurisdiction of the same kinds of cases originally triable in the circuit courts, so long as no constitutional authority of the circuit courts should be interfered with. *People ex rel. Jones vs. Judge of Kent Circuit*, 35 Mich. 494; *Heath vs. Kent Circuit Judge*, 37 Mich. 372; *Allen vs. Kent Circuit Judge*, 37 Mich. 474.

We find nothing in the Constitution to prevent original jurisdiction in a municipal court over crimes committed within a city. No provision

has been suggested having such an effect, and the original jurisdiction of circuit courts, civil and criminal, is subject to legislative exceptions. They have jurisdiction when not 'prohibited.' Article VI, Section 8."

This general proposition is laid down in a note to Cooley's Constitutional Limitations, seventh edition, page 389:

"Nor can the legislature take from a constitutional officer a portion of the characteristic duties belonging to the office and devolve them upon an office of its own creation," citing numerous cases.

It seems to me that the above authorities establish the following propositions:

1. Where an office is created by the Constitution, the legislature cannot abolish it by indirectly taking away its functions.

2. That the legislature has the authority, unless prohibited by the Constitution, within certain limits, to take away from and add to the powers and duties of a constitutional officer.

3. That under the provisions of sections 15 and 16 of article seven of the revised Constitution, the legislature may enact laws restricting and excepting from the jurisdiction of justices of the peace, either by conferring a portion of such jurisdiction upon courts, already provided for by the constitution or courts created pursuant to the provisions of section one of article seven. We do not think, however, that an act of the legislature providing for a county court and conferring upon such court exclusive jurisdiction in all matters now cognizable by a justice of the peace would be constitutional. Neither do we think that the clause in section 16 of article seven, "with such exceptions and restrictions as may be provided by law," permits the creation of a court having concurrent jurisdiction with justices of the peace below the amount of \$100. Such a conclusion would in our view read out of the constitutional provision the word "exclusive."

We have grave doubts of the power of the legislature to enact any law which would materially curtail the jurisdiction of justices of the peace in matters of ordinary civil jurisdiction. It is, therefore, our view that both of the questions submitted by you should be answered in the negative.

Very respectfully yours,

FRANZ O. KUHN,

Attorney General.

Hi-m-o

LIQUOR LAW. TOWNSHIP. The township board has authority to limit the number of saloons by ordinance.

The township board has the authority to raise the penalty of liquor bonds to \$6,000.

Each surety upon a liquor bond must justify to the full amount of the bond.

A petition against the acceptance of surety bonds signed by a majority of the qualified electors of the township, precludes the acceptance of such bonds.

February 8, 1911.

Mr. Lloyd Mead, Birch Run, Michigan:

Dear Sir—We are in receipt of your letter of February 4th, submitting the following inquiries relative to the general liquor law.

First, Under section 39 may the township board limit the number of saloons in a township, say to one to 1,500 or 2,000 population?

In reply thereto will say that this department has held that the township board may do this by enacting a proper ordinance.

Second, Under section 8 has the township board the power to raise the penalty of a liquor bond to \$6,000?

In reply thereto will say that the township board has authority to fix the amount of liquor bonds each year between the limits of \$3,000 and \$6,000.

Third, Under section 8 must each surety justify for the full amount of the bond?

In answer to this inquiry will say that the statute makes it plain that each surety must swear that he is worth in real estate situated within the county in which such business is proposed to be carried on having an assessed valuation in a sum equal to the amount of the bond, over and above all indebtedness and exemptions from sale on execution.

Fourth, Is it lawful to circulate a petition within the township protesting against the acceptance of surety bonds and will such a petition hold?

In reply to this inquiry will say that this department has repeatedly held that, under section 5196 of the Compiled Laws of 1897, as amended by Act 321 of the Public Acts of 1907, found on page 55 of the liquor law pamphlet, a petition of a majority of the qualified electors of any township, village or city, and equal to a majority of the votes cast for governor at the last general election, precludes the acceptance of a surety bond offered by any individual, firm or corporation proposed to engage in the sale of intoxicating liquors at retail. We may suggest, however, that it is the view of the department that a new petition must be filed each year.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

PRIMARY ELECTION LAW. CITIES. Primary election in cities must be held on the third Tuesday in March.

February 8, 1911.

Mr. F. H. Stone, City Attorney, Manistee, Michigan:

Dear Sir—I have your communication of February 7th, in which you ask on what date the primary election should be held in cities.

In reply thereto would say the last provision in section 44 of the general primary election act provides that:

“The primary election in cities having adopted the direct voting system for the nomination of candidates for city offices, to be voted for on the first Monday of April, provided for in this act, shall be held on the third Tuesday of March preceding such April election.”

We construe this provision to mean the third Tuesday in March. This would make the date of the primary election March 21st.

Yours very respectfully,

FRANZ C. KUHN,
Attorney General.

L-m-o

FRATERNAL BENEFICIARY SOCIETIES. A legally adopted child may be made beneficiary under the fraternal beneficiary law.

February 8, 1911.

Mr. W. McLaren Doig, Attorney-at-Law, Sault Ste. Marie, Michigan:

Dear Sir—We are in receipt of your letter of February 3rd, in which you state that a client of yours having insurance in the Independent Order of Foresters desires to have his adopted daughter made beneficiary and that the society has refused to have her named as such on the ground that it is prohibited by the laws of this State. You ask our opinion upon this question.

In reply thereto will say that under the statutes of this state a legally adopted child becomes to all intents and purposes a child of the adopting parent and the adopting parent owes it the same duties as to support, care, maintenance and education that he owes to his own blood and such adopted child is entitled, under the laws of distribution, to its distributive share of his estate. This department has held in an opinion given by Attorney General John E. Bird, under date of January 20, 1910, that a step-child may be a beneficiary under our statutes. I am entirely in accord with the reasoning in that opinion and I have no doubt but that any fraternal beneficiary society has the right to make a child legally adopted a beneficiary in the certificate held by the adopting parent.

A copy of the above mentioned opinion is herewith enclosed.

Yours very respectfully,

FRANZ O. KUHN,

Attorney General.

Hi-m-o-encl.

TAXATION. CONSTITUTIONAL CLASSIFICATION. The imposition of a specific tax upon those credits which represent or are secured by an interest in real estate is a proper classification as distinguished from other credit and would not be purely arbitrary, oppressive or capricious.

February 8, 1911.

Hon. George Lord, Chairman, Committee on General Taxation, Capitol, Lansing:

Dear Sir—I am in receipt of your communication of the first inst. in which you call attention to the fact that a number of bills are before your committee proposing a change in the present system of taxing mortgage credits; that some of the bills provide for a specific tax in lieu of all other taxes while others provide for a total exemption from taxation. You wish to know if a statute is passed following out the idea of either class of the bills mentioned, if same will be in contravention of Section 3 of Article 10 of the Constitution of the State of Michigan.

In reply thereto would say that Section 3 of Article X of the Constitution requires the Legislature to provide by law a uniform rule of taxation except on property paying specific taxes. Said section also

requires the Legislature to provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, etc. Section 4 of said article reads as follows:

"The Legislature may by law impose specific taxes which shall be uniform upon the classes upon which they operate."

In view of the language of the Constitution as found in Section 4 of Article X, the answer to your inquiry is narrowed down to the question as to whether or not mortgages generally speaking would be a proper classification of personal property for the purposes of taxation. Under the General Tax Law as it now stands there is no provision which expressly designates mortgages as a class of property subject to taxation. There is, however, express provision in the General Tax Law with respect to the taxation of credits as personal property and mortgages, being a species or class of personal property, have been taxed thereunder. In Cooley on Taxation, we find the following, commencing on page 76:

"The power of the State to distinguish, select and classify objects of taxation has a wide range of discretion. Classification must be reasonable, but there is no precise application of the rule of reasonableness, and there cannot be an exact exclusion or inclusion of persons and things."

I also quote from American and English Encyclopedia of Law, Vol. 27, page 603, as follows:

"Arbitrary classification by the Legislature of property of persons for the purpose of taxation, without regard to any system, is not generally permitted, and any separation into classes must rest on reasonable grounds. All property or premises of like nature or conditions naturally falling into a particular class must, of course, be included in such class in the imposition of the tax.

I also quote from page 604, as follows:

"Such classification may properly be based upon inherent difference in the nature of various classes, or upon the want of adaptability to the same methods of taxation, or it may be based upon well-grounded consideration of public policy. And where the classification rests upon such grounds the courts will not interfere."

With respect to exemptions from taxation I quote from Cooley on Taxation, page 78, as follows:

"An exemption from taxation is valid under the equal protection clause if founded upon a reasonable distinction in principle, and where the discrimination is not purely arbitrary, oppressive, or capricious, and made to depend upon conditions of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers."

In the case of Common Council v. Assessors, 91 Mich. 78, the supreme court of the State of Michigan held constitutional under the then constitution the provisions in Act No. 200 of the Public Acts of 1891 with respect to the taxation of mortgages as real estate. An examination of the opinion in this case will clearly disclose as I believe the difference between mortgages or those credits which are evidences of indebtedness and represent an interest in real estate from other personal property credits which have no relation whatsoever to interests in real property. I also call your attention to the case of Transportation Co. v. Detroit

Assessors, 139 Mich. 1. In this case it was held that the proviso of Section 3834 of the Compiled Laws to the effect that:

"The personal property of all corporations heretofore or hereafter organized under the laws of this State for the purpose of engaging in maritime commerce or navigation shall be assessed only in the city, village or township which is stated in their original articles of association or in any amendment thereof heretofore or hereafter made, to be the location of their general office for business."

was held unconstitutional as violating Section 11 of Article XIV of the then constitution. On page 6 the court called attention to the fact that this provision was not confined to vessel property so-called but extended to all the personal property of such corporation. The language so used by the supreme court indicates that had such provision only applied to vessel property a different conclusion might have been reached even under the constitution as it then existed. However, the matters and things involved in the bills before your committee were before the constitutional convention in 1907 and an examination of the debates will disclose the fact that it was the intention or desire of a large number of that body to incorporate in the Revised Constitution some provision which would give the Legislature authority to deal with the subject of the taxation of mortgages without incorporating the machinery in the Constitution itself. An examination of such debates will I believe, clearly show that Section 4 of Article X of the Revised Constitution was incorporated therein for the express purpose of permitting the Legislature to tax specifically different classes of property, and that this will be sufficient to permit the Legislature to properly deal with the question of the taxation of mortgages.

On the question of classification I call your attention to the case of Mutual Benefit Insurance Company vs. Martin County, 116 N. W. Reporter 572, which holds that the mortgage registry tax law of Minnesota is constitutional and that under the classification clause of the constitution of that State mortgages may be placed in a class by themselves for the purpose of taxation.

It is therefore my opinion that the imposition of a specific tax upon those credits which represent or are secured by an interest in real estate is within the power of the Legislature as distinguished from other credits. Such a classification would not be purely arbitrary, oppressive or capricious and I have no doubt but that the same rule would apply to the question of their complete exemption from taxation.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

TAXATION. Township treasurer required to account to county treasurer for all State and county taxes collected and cannot retain any portion of same under the claim that the collection was illegal or irregular.

February 8, 1911.

Mr. John A. Stewart, Prosecuting Attorney, Harrisville, Michigan:

Dear Sir—I am in receipt of your letter of the 3rd. inst., enclosing letter from the township board of Millen township. It appears from this communication that in 1909 the supervisor in spreading the State and county taxes used too high a rate so that the State tax was increased \$16.95 and county tax \$58.80, making a total of \$75.75, which amount has not been accounted for by the township treasurer to the county treasurer or to the township board.

In reply thereto, we call your attention to Section 54 of the General Tax Law which requires a township treasurer to pay to the county treasurer all State and county taxes collected.

I also call your attention to *Berrien County Treasurer, v. Baumberry*, 45 Michigan 79, in which case it was held that a tax collector was required to pay to the county treasurer all sums collected for State and county taxes, as he cannot retain any portion of same under the claim that the collection was illegal or irregular.

I also call your attention to Section 55 of the General Tax Law with respect to the statements required to be made by the township treasurer, which statements are required to be verified by the affidavit of such treasurer, etc.

I also call your attention to Section 56 of the General Tax Law which provides, among other things, that the county treasurer shall endorse upon the bond of the township or city treasurer the fact of the settlement with that official, which endorsement shall operate as a discharge of the treasurer and his sureties from the obligation thereof unless the return of such treasurer is incorrect, in which case said bonds shall continue in force and such treasurer and his sureties shall be liable thereon for all damages incident to such incorrect returns.

It is my opinion the township treasurer in question is in duty bound to pay such moneys to the county treasurer; that if his return to the county treasurer is incorrect he and his bondsmen would be liable in spite of the settlement between the county treasurer and the township treasurer.

I also call your attention to Section 18 of the General Tax Law, which provides as follows:

“Any person who, under any of the proceedings required or permitted by this act shall wilfully swear falsely, shall be guilty of perjury and subject to its penalties.”

Section 119 of the General Tax Law also makes it a misdemeanor for any official to wilfully neglect or refuse to perform any of the duties imposed upon him by the General Tax Law.

It seems to me that mandamus proceedings would lie on behalf of the county treasurer against the township treasurer to compel him to account for the moneys in question, or that suit might be instituted against

said official and his bondsmen, and if the facts and circumstances warrant criminal prosecution might be instituted.

It is also my opinion that the township board would have no rights in the matter whatever.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

M-p-o.

DRUG INSPECTION LAW. A preparation containing 82 per cent of wood alcohol must be so labelled under the provisions of Act 146 of the Public Acts of 1909.

Wood alcohol is included within the term alcohol as used in Act 146 of the Public Acts of 1909.

February 8, 1911.

Hon. Gilman M. Dame, State Dairy and Food Commissioner, Lansing, Michigan :

Dear Sir—We have given attention to the question submitted by you as to whether "Hanford's Balsam of Myrrh" is properly labeled and can be sold under the drug inspection act, Act 146 of the Public Acts of 1909. This preparation is labeled as "an external remedy for the human system and domestic animals" and states upon the label that it contains "wood alcohol 82 per cent." Section 2 of the act above cited states:

"The term 'drug' as used in this act shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals."

I am advised that wood alcohol is not recognized as a drug in the United States Pharmacopoeia or National Formulary; that the only alcohol recognized is Ethyl or Grain alcohol. However, I am convinced that wood alcohol comes within the term "drug" as defined in Section 2, which includes "any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals." It is also within the term "drug" as defined by Webster, which is, "Any animal, vegetable or mineral substance used in the composition of medicines." It is necessary, therefore, to examine the following sections of Act 146 to determine whether the preparation is adulterated or misbranded.

It is clear that the preparation is not misbranded within the provisions of subdivision first and second of Section 3, nor is it misbranded within subdivision 1 of Section 4. It cannot be said that it is misbranded within the provisions of subdivision second of Section 4, requiring it "to bear a statement on the label of the quantity or proportion of any alcohol * * * contained therein" for the reasons that the label plainly states that the preparation contains 82 per cent of wood alcohol. It must be remembered that the statute in question is a penal statute and the provisions thereof are therefore strictly construed and nothing will be deemed to be in violation of the act unless clearly within its terms. We think that there is no possible doubt that wood alcohol is a drug within Section 2. To hold that alcohol as used in subdivision

second of Section 4 does not include wood alcohol would be to say that the label on the package in question would not be misbranded if it failed to state the amount of wood alcohol therein contained. It is our view that subdivision second of Section 4, requiring the label to state "the quantity or proportion of any alcohol * * * or any derivative or preparation of any such substances, contained therein" is sufficiently comprehensive to include wood alcohol within its terms.

We have examined the drug inspection decisions Nos. 1 and 2, heretofore made by the Dairy and Food Department and we feel obliged to dissent from the conclusion therein stated that Methyl or purified wood alcohol, under any trade name is forbidden to be used in medicinal preparations under the provisions of Act 146 of the Public Acts of 1909.

The preparation submitted is returned under separate cover.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

PRIMARY ELECTION LAW. CANDIDATE FOR CIRCUIT JUDGE. NOMINATION PETITION. SECRETARY OF STATE. Person cannot file nomination petitions as candidate for circuit judge of more than one political party. Name of candidate for circuit judge cannot be printed upon the ballot of more than one political party.

February 8, 1911.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—I have your communication of February 3rd, enclosing copy of communication received from Hon. Richard C. Flannigan, circuit judge of the 25th judicial circuit. It appears from Judge Flannigan's communication that he has filed with you nomination petitions for himself as a candidate of the republican party for the office of circuit judge, and also nomination petitions for himself as a candidate of the democratic party for the office of circuit judge. You ask whether you should accept and file the petitions of the same person as a candidate for circuit judge of more than one political party.

In reply thereto would say the question which you present does not seem to be expressly provided for by the general primary election act. The act seems to recognize the possibility of the nomination of a candidate by more than one political party for it provides "that if a person is nominated for the office by more than one political party it shall be his duty to elect within five days upon which ticket he wishes his name to appear." (See section 41 of the general primary election act.) However, Section 2 of the general primary election act expressly makes the provisions of the general election law applicable except where the contrary is indicated. Section 148 of the pamphlet of general election laws, revision of 1909, prohibits the board of election commissioners from printing or placing in more than one column the name of any candidate who shall have received the nomination by two or more parties. It would seem that in the absence of any express provision in the general primary election law authorizing the practice in question, that in view of the foregoing provision of the general election law, the board of elec-

tion commissioners would have no authority to print Judge Flannigan's name upon the ballots of more than one political party.

Judge Flannigan states in his communication that if both petitions cannot be received, he wishes his name placed upon the republican ballot. It is, therefore, my opinion that you should receive and file the nomination petitions signed by republican electors and return to him the nomination petitions signed by democratic electors, and advise him that you have no authority under the law to receive and file or pass upon nomination petitions filed by the electors of more than one political party.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

LOCAL LEGISLATION. A local act cannot be passed authorizing a township to raise money by taxation to construct a telephone line.

February 9, 1911.

Hon. N. L. Field, Representative, Representative Hall, Capitol, Lansing:

Dear Sir—You have referred to us the letter of one Nelson Fisher, of your district, who inquires whether a special act could be passed that would enable the people of Drummond to raise money by taxation for the purpose of establishing a telephone line to connect with DeTour.

In reply to the inquiry therein submitted will say that we think such special act could not be passed for the reason that a general act could be made applicable and such an act would therefore be in violation of Section 30 of Article V of the Revised Constitution, which provides that:

"The Legislature shall pass no local or special act in any case where a general act can be made applicable and whether a general act can be made applicable shall be a judicial question."

Yours very respectfully,

FRANZ C. KUHN,

Attorney General-

Hi-m-o.

JUDGE OF PROBATE. A judge of probate is not entitled to charge for making copies of papers on file in his office where the statute requires him to make them as a part of his official duty in carrying out some statutory proceeding.

February 9, 1911.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Michigan:

Dear Sir—We are in receipt of your letter of December 6th, in which you inquire whether the judge of probate is entitled to fees for making an attested copy of a will and the probate thereof where lands are devised for record in the register of deeds' office, under the provisions of Section 9298, Compiled Laws, 1897; also whether you are entitled to a fee for making a certified copy of the order of sale to be delivered to the executor or administrator, under the provisions of section 9091,

Compiled Laws, 1897. You ask further whether you will be entitled to a like fee for making an exemplified copy of a foreign will, to be recorded in the office of the register of deeds.

In reply thereto will say that Section 1 of Act 119, Public Acts of 1903, after providing for the method of determining a salary of the judge of probate, reads as follows:

"The amount of such salary to be paid the judge of probate of the several counties shall be based upon and determined by the population of their respective counties, as shown by each succeeding national or State census, which salary shall be *in full compensation for all services performed* by them in connection with any estate or matter in their respective courts and they shall make no charge to any person for any paper drawn or service performed by them or any person or clerk connected with their office, except for copies of record or papers on file and certificates and exemplifications of records or papers in his office, which shall be furnished for ten cents per folio and twenty-five cents for certifying, sealing and attesting the same."

The rule is laid down in *Eley vs. Miller*, 7 Ind. App. 529, that, "public policy requires that a public officer should make no charges for performing any services in matters pertaining or relating to his official duties."

In the case of *Patterson vs. Calhoun* Circuit Judge, 144 Mich. 416, the probate judge made a charge for preparing certified copies on a return to certiorari from the circuit court. Section 4392 of the drain law provides that:

"The judge of probate shall receive ten cents per folio for making exemplified copies of any proceedings had in the probate court." The Supreme Court held, page 421, as follows:

"We are of the opinion that Section 4392 does not apply to copies of proceedings in the probate court required by law to be set forth in the return of the writ of certiorari by the judge of probate himself."

It is apparent from this language that the Supreme Court did not consider that the provision for the payment of fees for exemplified copies applied in cases where the law made it a part of the official duty of the judge of probate to furnish the copy in question. Applying this principle to the provisions of Section 9091 of the Compiled Laws of 1897, requiring the judge of probate to furnish a certified copy of the order of sale to the executor or administrator, it is our view that you are not entitled to make a charge for such certified copy. Under the provisions of Section 9298 of the Compiled Laws of 1897, which makes it the duty of the judge of probate to cause a copy of the will and the probate thereof to be registered in the office of the register of deeds and provides that: "The expense thereof should be a charge against the estate and should be paid in the same manner as other expenses of administration are." We think the statute contemplates that the word "expense" shall include the charge for making the certified copy as well as the recording fee. The same rule would apply in our judgment to the making of an exemplified copy of a foreign will to be recorded in the office of the register of deeds.

In general, it is our view that where the judge of probate is required by law to make a certified or exemplified copy of papers on file in his

office as a part of his official duty in carrying on some statutory proceeding, he is not entitled to make a charge therefor unless as in the case of recording a will, Section 9298 Compiled Laws, the statute indicates that such a charge may be made.

The question submitted relative to fees in drain matters is answered by an opinion to James D. Brooker, Prosecuting Attorney, Caro, Michigan, under date of August 19, 1908, which appears on page 69 of the Attorney General's report for 1909. We are mailing you, under separate cover, a copy of this report.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

LEGISLATURE. VACANCY. PRIMARY ELECTION LAW. No Provision made in primary election law for selection of candidate for member of legislature to fill vacancy.

February 10, 1911.

Mr. Frederick B. Brown, Attorney-At-Law, Port Huron, Michigan:

Dear Sir—I have your communication of February 8th, relative to the method of nominating a successor to the late Charles Green, a member of the legislature.

In reply thereto would say there is no provision made in the primary election law for the selection of a candidate for office in case of vacancy. It will be necessary for candidates for such office to be selected in a convention. The election, therefore, will be a special election to be called by the Governor.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

ALIENS. PROPERTY FOUND UPON DECEASE. A judge of probate is authorized to administer the estate of a deceased alien upon whose person property was found at the time of his death.

February 10, 1911.

Mr. James Corgan, Ontonagon, Michigan:

Dear Sir—Your letter of the 3d instant received. Therein you state the following facts. A Russian Poland citizen was killed by accident in your county on the 30th ult. He had resided in the county of Ontonagon three months or more and was single. All his relatives live in Russian Poland. Said deceased had \$71 and a watch on his person at the time of his death. The money and watch were taken by the foreman under whom he was working and were turned over to the judge of probate. You claim that it was your duty to turn said articles over to the county clerk. You ask if it is within the duties of the judge of probate to handle the matter.

We assume in replying that you base your contention, namely, that

it was your duty as coroner to turn the articles found on the person of said deceased over to the county clerk, on section 11835 of the Compiled Laws which reads:

"That whenever any money or valuable property shall be found upon the body of an unknown deceased person within this State, it shall be the duty of the coroner or justice holding the inquest over said body, or any person who shall come into possession of said money or valuable property, to deliver all of said money or valuable property so found to the county clerk of the county where said body shall be found or be at the time of death, within ten days after said money or property shall have come into their possession."

In our opinion this section does not apply to the present case in that it relates to instances where the deceased is an unknown person, while under your statement of facts, the deceased in this case was known and had resided in your county upwards of three months; and it is known further that he has relatives and that they reside in Poland.

We believe that the foreman was justified in taking possession of the property referred to and turning it over to the probate court. Section 650 of the Compiled Laws of 1897 reads as follows:

"The judge of probate for each county shall have power to take the probate of wills, and to grant administration of the estate of all persons deceased, who were at the time of their decease inhabitants of or residents in the same county, and of all who shall die without the State, leaving any estate within such county to be administered; and to appoint guardians to minors and others in the cases prescribed by law, and shall have and exercise all such other powers and jurisdiction as are or may be conferred by law."

We believe it competent therefore for the judge of probate to proceed to grant administration of the personal estate referred to, under the above provision.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mck-o.

COMPULSORY SCHOOL LAW. Compulsory school law applies to married girl who is but fifteen years of age.

February 9, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol,
Lansing, Michigan:

Dear Sir—I have your communication of January 28th from which it appears that a certain girl who is fifteen years of age was recently married. You ask whether this girl is subject to the provisions of the compulsory school law.

It is my opinion that since the compulsory school law applies to all children between the ages of seven and sixteen years, that the girl in question would be subject to the provisions of the compulsory school law.

Yours very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

COUNTY DRAIN COMMISSIONER. Where a county drain commissioner has never been chosen under the provisions of Section 1, Chapter 2 of Act 118 of the Public Acts of 1909, the county clerk, prosecuting attorney and judge of probate have authority to make an appointment to fill the vacancy.

February 16, 1911.

Mr. John Garvin, County Clerk, Ontonagon, Michigan:

Dear Sir—We are in receipt of your letter of February 6th, returning our letter to you of February 2nd, relative to the existence of a vacancy in the office of county drain commissioner in Ontonagon county. You state that you should have advised us in your former letter that no drain commissioner had ever been elected in Ontonagon county and that, therefore, there was no commissioner holding office on December 31, 1909.

Under these circumstances it is our view that a vacancy in the office exists which may be properly filled by a majority vote of the county clerk, prosecuting attorney and judge of probate, as provided in Section 1 of Chapter 2 of Act 118 of the Public Acts of 1909.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

STATE. The State has no authority to become a member of a private organization which makes assessments to be used in the protection of forest lands.

February 16, 1911.

Mr. Thomas B. Wyman, Secretary, The Northern Forest Protective Association, Munising, Michigan:

Dear Sir—We are in receipt of your letter of January 27th, submitting a copy of the constitution and by-laws of the Northern Forest Protective Association, which provides for an acreage assessment on members to be used in the protection of the forest lands of the members. You ask whether the State has the right to become a member of such an organization.

In reply thereto will say that it is my view that the State has not the power to become a member of any private organization. The power conferred upon the State to protect its forests, under Article X, Section 14 of the revised constitution, simply confers upon the Legislature the power to provide for such protection by law, to be executed by the officers of the State selected for that purpose. While the purpose of the Northern Forest Protective Association is a laudable one, it is such a private purpose as will prohibit the State from participating therein.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

LIQUOR LAW. VILLAGES. A village in a county which has returned to the license system since the adoption of the Warner-Cramton amendments and which had a population authorizing two saloons prior to the census of 1910, but had a population of less than 1,000 in 1911, is entitled to but one saloon.

February 16, 1911.

Mr. Earl Lovejoy, Attorney-at-Law, Milford, Michigan:

Dear Sir—We are in receipt of your letter of February 3rd, asking for an opinion from this department relative to the following statement of facts arising under Section 39 of Act 291 of the Public Acts of 1909, known as the Warner-Cramton Law:

The village of Milford is in Oakland county. Oakland county returned to the license system in May, 1910, at which time Milford had a population of 1,063, according to the census of 1900. Pursuant to this census two licenses were granted. The census of 1910 gives the population of Milford as 963. You ask whether the village council has authority to grant more than one license for the year beginning May 1, 1911.

The following clauses of Section 39 of the Warner-Cramton Law are involved:

"When applied for in accordance with the provisions of this act, bonds shall be approved by the local board, board of trustees, council or common council in each township, village and city for retail liquor dealers, not to exceed the number doing business in said township, village or city in the month of April, nineteen hundred nine: Provided, That if after this act takes effect the number of retail liquor dealers in any township, village or city shall be in excess of the ratio of one to each five hundred inhabitants, according to the last United States census, no license or licenses shall be issued to any person or persons to take the place of such license or licenses as shall have been revoked as in this act provided, or that shall voluntarily have been surrendered, until the ratio of the licenses granted, and the saloons in such township, village or city shall not exceed one saloon for every five hundred inhabitants thereof, according to the last United States census."

Also,

"It is understood that in counties that have adopted local option or may hereafter adopt the same and afterwards vote to return to the license system, there may be established saloons not to exceed one to every five hundred inhabitants of any township, village or city in said counties."

It will be noted that the proviso in the first quotation from section 39 is general in its nature, while the sentence at the end of the section applies to counties which have returned to the license system after having adopted local option. It is a rule of statutory construction, that a statute must be construed, if possible, to give all of its terms effect. This could not be done if the proviso was held to apply to counties which have returned from the local option to the license system. The application of the proviso to such counties would absolutely nullify the last sentence of the section. With this rule in mind, it is our view that the last sentence applies to counties which have returned to the license sys-

tem since Act 291 took effect, as Oakland county has done, and that the village council of Milford would not be entitled to grant more than one license for the year beginning May 1st, 1911.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

REGISTRATION OF VOTERS. BOARD OF REGISTRATION. During first two days of session of board of registration board not required to register the name of voter unless upon personal request. Thereafter personal request may be made to any member of the board and taken by the member to the board.

Registration of names requires the action of the board.

February 16, 1911.

Mr. Marvin J. Schaberg, City Attorney, 405 Kalamazoo National Bank Building, Kalamazoo, Michigan:

Dear Sir—I have your communication of February 8th, in which you state that your city has recently passed an ordinance providing for a complete re-registration and that all of the rules and requirements prescribed in Chapter 94 of the Compiled Laws of 1897, are made applicable. You ask:

1. In case that a qualified voter should either before the day of registration or upon the day of registration personally ask some member of the registration board to be sure and register his name but should not personally appear before the board at their meeting place, would that voter be entitled to vote at the election in case the member of the registration board failed to register his name?

2. Would there be any liability on the part of a member of said board, who having been requested to register a voter whom he knew to be qualified but where said request was made at some place and time other than during the session of the board of registration, for not registering the name of such voter?

In reply thereto would say if the provisions of chapter 94 of the Compiled Laws of 1897, being section 3536, etc., are made applicable it would seem that in accordance with the provisions of Section 3538 of the Compiled Laws of 1897, the board during the first two days could not be required to register the name of any voter unless he makes personal request to the board. After that time I understand that a personal request to any member of the board may be taken by such member before the board. It must, however, be understood that the registration of names is board action rather than individual action. I am inclined to think that under the statute, it is the duty of the voter to see that his name is registered, but it is also the duty of the Board of Registration, after the first two days of the session, to register the names of all those whom the members of said board know to be qualified electors. I do not understand that a particular member of a board has the right to register the name of a voter unless his action is agreeable to a majority of the members of the board.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

STATE, LIABILITY OF. The State is not liable to a person who while visiting the Michigan State Prison was injured by the breaking of a belt in the machine shop of a contractor at the prison.

The statute providing that the warden shall be capable of suing and being sued does not create any liability for damages caused by the torts of the officers and agents of the State when acting in a governmental capacity.

February 16, 1911.

The Board of Control, Michigan State Prison, Jackson, Michigan:

Gentlemen—I am in receipt of a communication from Mr. Justin R. Whiting, Attorney-at-Law, Jackson, Michigan, representing that his client, Charles D. Rettie, of Port Huron, on September 15th last, while a visitor at the Michigan State Prison was injured by the breaking of the belt in the machine shop of the Withington-Cooley Company and claiming that the State is liable for the injuries received by Mr. Rettie. He requests that we advise the Board of Control on the question of whether or not the State is liable in the premises.

Section 53 of Act 118 of the Public Acts of 1893, revising and consolidating the laws relative to the several prisons (Section 2132 of the Compiled Laws of 1897), reads as follows:

“It shall be lawful for the board to establish uniform rules for the admission of visitors within the prison, and they may prescribe a reasonable sum, not more than twenty-five cents, to be charged each individual for one admission: Provided, That no ticket of admission shall be sold to any person known to have served a term in this or in any other prison, or to any persons intoxicated, or under the influence of liquor, or disorderly person, or to any person known to the prison officials, or in the police circles as a ‘crook’ or prostitute. The warden shall procure suitable tickets, which shall be held by the clerk, who shall keep an account of such sales, and pay over the money received to the warden daily. The gate keeper at the prison entrance shall receive the tickets, and shall deliver them to the warden each day before the prison is closed. It shall be the duty of the board to appropriate annually out of the fees received from visitors the sum of five hundred dollars in the purchase of books for said prison for the use of said convicts.”

Section 12 of the same act (Section 2091 of the Compiled Laws of 1897), provides:

“All the fiscal transactions and dealings on account of each prison shall be conducted by and in the name of the warden thereof, who shall be capable in law of suing and being sued in all matters concerning the said prison, by his name of office; and by that name he is authorized to sue for and recover all sums of money or any property due from any person to the State on account of any business pertaining to the prison in his charge. When a controversy arises respecting any contract made by the warden on account of the prison, or a suit is pending thereon, the warden may, with the written approval of the board, submit the same to the final determination of arbitrators or referees.”

Assuming (but not admitting) that the injuries inflicted upon Mr.

Rettie, if any, were due to the negligence of the officers or employes of the State at the Michigan State Prison, I am of the opinion that the State is not liable therefor.

In *Nicholson vs. City of Detroit*, 129 Mich. 246, 248, the court said:

"It is the well settled rule that the State is not liable to private persons who suffer injuries through the negligence of its officers."

This, of course, is the rule in absence of statutes making the State liable. See also, *Moody vs. State Prison of North Carolina*, 128 N. C. 12; 53 L. R. A. 855.

Both of these cases contain an exhaustive discussion of the question and numerous authorities are cited in support of the doctrine that the State is not liable for the misconduct or negligence of its officers or agents.

Neither does the statute above quoted, section 2091, providing that the warden shall be capable in law of suing and being sued in all matters concerning the prison, create any liability for damages caused by the torts of the officers and agents of the State when acting in a governmental capacity. (*Moody vs. State Prison of North Carolina*, supra.)

In view of these authorities, I am of the opinion that Mr. Rettie has no claim against the State for any damages he may have suffered by reason of injuries received while visiting the Michigan State Prison.

Yours very respectfully,

FRANZ C. KUHN,
Attorney General.

La-m-o.

PRIMARY ELECTION BALLOTS. CANDIDATES FOR CIRCUIT JUDGE. Candidate for circuit judge cannot have his name appear upon the primary election ballots of more than one political party.

February 16, 1911.

- Mr. Samuel S. Cooper, Ironwood, Michigan:

Dear Sir—Your night letter of February 10-11th relative to the right of a candidate for the office of circuit judge to have his name appear upon the primary election ballots of more than one political party received. We have advised the Secretary of State that a person has not the right to file the nomination petitions of more than one political party. It is the duty of the various boards of election commissioners to prepare primary election ballots for the various political parties regardless of whether any candidate of such political parties has his name printed upon the ballots, or not. The voters of a political party are entitled to the right to vote for a party candidate even though the name of the candidate does not appear upon the ballot.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.

SCHOOL LAW. CRIMINAL WARRANTS. In case of warrant obtained under the compulsory school law without the filing of security for costs or the consent of the prosecuting attorney, the justice forfeits the right to his fees.

February 16, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing, Michigan:

Dear Sir—Your letter of the fourth instant, enclosing communication from George F. Roxburgh, Commissioner of Schools in Osceola county, received. Therein the following question is asked:

"Must the consent of the prosecuting attorney be obtained before complaint can be made and a warrant issued under the compulsory school law?"

In reply thereto will quote Section 1061 of the Compiled Laws of 1897:

"That it shall not be lawful hereafter for justices of the peace to issue warrants in any criminal cases, except in cases not recognizable by justices of the peace, or breach of the peace committed in the presence of the officer making the arrest, until an order in writing allowing the same is filed with such justice, and signed by the prosecuting attorney for the county, or unless security for cost shall have been filed with said justice: Provided, That this act shall in no way limit or affect the force of section eleven of act number two hundred and fifty-nine, of the session laws of eighteen hundred and eighty-one, as to security for costs."

Thus it appears that unless security for costs is filed with the justice of the peace, it is unlawful for him to issue a warrant in any criminal case without a written order signed by the prosecuting attorney, allowing such warrant to be issued. However, if in any criminal case the above statute is not complied with by the justice, the proceedings are not thereby invalidated but for such violation the justice forfeits his right to his fees.

Sunderlin v. Board of Supervisors of Ionia Co., 119 Mich. 535;

Hutchinson v. Board of Supervisors of Ionia Co., 130 Mich. 62.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

CAUCUS. RIGHT OF ENROLLED DEMOCRAT TO VOTE IN REPUBLICAN CAUCUS. The caucus is the judge of the qualifications of its members.

February 23, 1911.

Mr. George Cummings, Ferry, Michigan:

Dear Sir—I have your communication of February 18th, in which you ask whether an enrolled democrat has a right to vote in a republican caucus.

In reply thereto would say the caucus itself is the judge of the qualifications of its members. If the caucus chooses not to permit an enrolled democrat to vote, such action will be decisive. This whole matter is subject to the will of the caucus.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

INHERITANCE TAX LAW. CAPITAL STOCK OF DOMESTIC CORPORATIONS. NON-RESIDENT DECEDENTS. Inheritance tax law applies to the transfer of stock in domestic corporations where certificates kept at the domicile of a non-resident.

February 23, 1911.

Mr. William H. Corbin, Tax Commissioner, Hartford, Conn.:

Dear Sir—I have your communication of February 21st, in which you ask if it is the practice in this State to collect an inheritance tax on the transfer of the capital stock of corporations organized under the laws of our State when held by the estates of non-resident decedents, when such securities were actually at the domicile of the decedent, or elsewhere.

In reply thereto would say our inheritance tax act (Act 195 of the Public Acts of 1903, as amended) authorizes the taxation of the transfer of such property as that to which you refer. This proposition has been settled in the case of *In re Stanton's estate*, 142 Mich. 491.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

NAVAL MILITIA. LOCKERS. STATE MILITARY BOARD. State Military board has no authority to pay for lockers for armory rented by a battalion in the naval militia.

February 23, 1911.

Mr. Divie B. Duffield, 714 Union Trust Bldg., Detroit, Michigan:

Dear Sir—I have your communications relative to the right of the State Military Board to purchase lockers to be installed in an armory for the use of a battalion in the naval militia.

In reply thereto would say I am unable to find any authority residing in the State Military Board that would confer upon it the power to

authorize the use of any part or portion of the naval militia appropriation for the purchase of lockers for an armory. Moneys appropriated for organizing, maintaining and equipping forces of the State naval brigade cannot necessarily be used for the purpose in question. The law in relation to the Michigan National Guard has even a broader significance than the law relating to the Michigan State Naval Brigade and in that case I seriously question the right of the State Military Board to use money for the purchase of lockers for an armory.

If your battalion has any authority at all to rent an armory the renting of a hall would not constitute the renting of an armory. A hall without any equipment is not an armory. Furthermore, I understand that in the quarters from which you removed there were lockers in use. The fact that the old lockers may be out of date, that they are inadequate for present purposes or that they encroach upon the drilling space would not under the circumstances constitute a good and sufficient reason for refusing to use them in the new quarters. It is my opinion that the term "Equipage" cannot be construed to include lockers. There must be express legislative authority for the use of money for this purpose and in the absence of such authority it would be an unwarranted act upon the part of the State Military Board to attempt to use it for such purpose. We have heretofore advised the State Military Board that it has no authority to purchase lockers for your armory and no good reason has been suggested to me why this ruling should be changed.

I may suggest, however, that if it is necessary to have lockers installed in the armory in question the matter should be presented to the legislature. If the legislature sees fit to appropriate money for this purpose the question will thereby be relieved from all possible doubt.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

CORPORATIONS. A corporation organized under Act 171 of the P. A. of 1903, has no authority to pay a weekly sick benefit.

A corporation organized under Act 171 of the Public Acts of 1903 has no authority to engage in a funeral benefit business unless it charges the rates prescribed by Act 298 of the Public Acts of 1907.

February 23, 1911.

Mr. W. J. Gentsch, 29 Monroe Avenue, Detroit, Michigan:

Dear Sir—We are in receipt of your letter of February 18th, in which you submit the following inquiries:

1. Can a society, the purpose of which is to provide for the relief of distressed members, to visit the sick, to bury the dead, pay a weekly sick benefit and a funeral benefit not exceeding two hundred dollars, and also have acquired real estate, be organized and operate under act 171 of the public acts of 1903?

2. Does act 298 of the public acts of 1907 repeal or conflict with act 171 of the Public Acts of 1903?

In reply to your first inquiry will say that section 8 of act 171 of the public acts of 1903, as amended by act 68 of the public acts of 1905, provides as follows:

"Nothing in this act contained shall permit any company, association or society to transact any insurance business other than the payment of a funeral benefit of not to exceed two hundred dollars."

Section 15 of act 298 of the public acts of 1907, provides as follows:

"Associations organized under act one hundred seventy-one of the public acts of nineteen hundred three, entitled "An act for the incorporation of associations not for pecuniary profit," that are engaged in a burial benefit business may reincorporate under this act and shall thereby become subject to all its provisions: Provided, That if any such association shall not reincorporate under this act such association shall accept no new business or new membership at less rates than those provided to be collected under the provisions of this act: Provided further, That the membership now existing may continue to follow out the plan in force in such associations at the date of the passage of this act: Provided further, That the funds collected from such new members shall be used only for paying benefits to the beneficiaries of such members."

It is manifest that a corporation cannot be organized under act 171 to pay a weekly sick benefit for the reason that this is a form of insurance. If a corporation, organized under act 171, desires to pay a funeral benefit not exceeding \$200.00, it has no authority to do so unless it charges the rates therefor provided in section seven of act 298 of the public acts of 1907, to-wit: The rates prescribed in the so-called fraternal congress table of mortality. Corporations organized under act 171 have authority to own real estate such as may be necessary to carry out the corporate purposes.

Answering your second inquiry will say that act 298 of the public acts of 1907 conflicts with act 171 of the public acts of 1903, as amended, to the extent above mentioned, and therefore supersedes, at least to that extent.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-m-o.

TOWNSHIP. A township voting to issue bonds for the building of State Reward Roads is entitled to the return of the county road tax paid by the township, the tax to be applied in payment of the principal of such township road bonds until they are fully paid.

February 23, 1911.

Mr. Henry G. Reek, Prosecuting Attorney, Ludington, Michigan:

Dear Sir—I am in receipt of your letter of February 18th, in which you state that Mason county some years ago adopted and is now operating under the county road system; that last October the board of supervisors adopted a resolution proposing to raise \$105,000.00 to build highways by bonding the county, the proposition to be voted upon at the April election. That the township of Riverton in Mason county, acting under section 8 of chapter 14 of act 283 of the public acts of 1909, proposes to bond the township for \$20,000.00 for the building of roads, a special election for the submission of the bonding proposition being called for sometime in March. You request our opinion as to whether or

not in the event the township votes in favor of the proposition of issuing such bonds, this will result in taking the township out of the county road system and whether or not in case the proposition to bond the county for \$105,000 carries, the township will be relieved from bearing its share of the burden.

In reply thereto would say that act 283 of the public acts of 1909 contains provisions authorizing counties to adopt a county road system and raise money and issue bonds for use in building county roads, and also provisions authorizing townships to issue bonds for the purpose of improving township roads.

Section 26 of chapter four of the act reads as follows:

"The adoption of the county road system in any county shall not prohibit any organized township from building State reward road with moneys raised by tax or by bonding, and in townships where money has been raised by bonding to build State reward roads the township clerk shall certify to the board of supervisors at the annual meeting thereof the amount of such bonds remaining unpaid, and the county road tax paid by such township shall be returned to the township each year to be applied in payment of the principal of such bonds until they are fully paid."

Under the provisions of this section, if the proceeds of the bonds are to be used by the township in building state reward roads, it is apparent that the township would be entitled to the return of the county road tax paid by the township, the same to be applied in payment of the principal of such township road bonds until they are fully paid. If the proceeds are not to be used for the building of state reward roads, I am of the opinion that the action of the township in issuing township road bonds would not operate to take the township out of the county road system and the township would be liable for its share of the county road tax.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

SCHOOL LAW. A Justice of the Peace is not authorized to issue a warrant upon complaint made by a truant officer for violation of the compulsory school law without a written order from the prosecuting attorney of the county.

LOCAL OPTION LAW. A sale of liquor in violation of the local option law takes place where a company ships liquor consigned to itself in a county where the local option law has been adopted and the liquor is delivered in that county.

February 23, 1911.

Mr. B. Newton Savidge, Prosecuting Attorney, Reed City, Michigan:

Dear Sir—I am in receipt of your letter of February 21st, in which you ask whether or not a written order from the prosecuting attorney is required before a justice of the peace is authorized to issue a warrant upon a complaint made by a truant officer for violation of the compulsory school law; and also whether or not the sale of liquor in a county where the Local Option Law has been adopted, in the manner stated in your letter, constitutes a violation of that law.

For reply to the first question submitted would say that under date of February 16, 1911, the Attorney General gave an opinion to the Superintendent of Public Instruction holding that a written order from the prosecuting attorney was required before a justice of the peace is authorized to issue a warrant upon a complaint made by a truant officer for violation of the compulsory school law, unless security for costs is given as provided by statute. It was there stated also that the proceedings would not be invalidated by the failure to procure the order from the prosecuting attorney, but that the justice issuing the warrant would forfeit his fees.

In the second question submitted it is stated that a barrel supposed to contain bottled whiskey was shipped by freight to Wm. Drueke Company at Reed City, Michigan, from Wm. Drueke Company, Grand Rapids, Michigan. The firm is a wholesale dealer in liquors. The shipment was delivered to a drayman who paid the freight charges and who presented an order reading as follows:

"Frank Parker is hereby authorized to receive and receipt in our name for any one barrel whiskey consigned to us for delivery at above Station.

And for any freight delivered without payment of charges we agree to pay on demand the billed amount of such charges.

This authority shall hold good until the expiration of twenty-four hours after formal written notice of cancellation served on the Agent in charge of above Station.

Dated, January 21, 1911.

Wm. Drueke Company,
M. Richard,
Per Sec. & Treas."

It is also stated that no further facts are known in connection with the matter except that the barrel was delivered by the drayman to a club which is claimed to be a Michigan corporation. You ask whether or not in the event that it can be established that the barrel contained whiskey, the facts would constitute a violation of the local option law.

For reply thereto would say it is our opinion that under the facts presented by you there is a clear violation of the provisions of the local option law. The company by shipping the liquor in its own name and delivering the same in a county where the local option law has been adopted, undoubtedly, makes a sale of the liquor in that county in violation of law. The company retains control over the shipment until delivery and under such circumstances the sale is not complete until delivery is made.

It is our opinion that if you can establish the fact that the barrel contained whiskey, the sale of the same in the manner stated is a violation of the provisions of the local option law.

Yours very respectfully,

FRANZ C. KUHN,
Attorney General.

La-m-o.

SOLDIERS' BURIAL BENEFIT. Under Act 252 of the Public Acts of 1909, the board of supervisors cannot be compelled to audit a claim for burial in the absence of an investigation made by the person designated by the board of supervisors and the finding of his inability to pay and a burial under the direction of the person so designated.

February 23, 1911.

Hon. John Leidlein, State Senator, Capitol, Lansing:

Dear Sir—We have examined the letter of Mr. Fred Gill written to you under date of February 20th, which was referred to this department and in which he questions the right of the board of auditors of Saginaw county to refuse to allow the \$55 which under certain circumstances is allowed for the burial of soldiers and widows of deceased soldiers under the provisions of Act 252, Public Acts of 1909. In the case to which he calls attention an assessment had been made upon the members of Sherman Camp to the amount of \$50 to enable the widow "to prepare herself and family for the funeral." You will appreciate that it is impossible for us to advise intelligently upon the particular question submitted without knowing all of the facts and we would not undertake to do so except upon an inquiry presented by the prosecuting attorney of the county who is the advisor of the board of county auditors.

We will, however, make the following suggestions relative to the scope of Act 252, Public Acts of 1909. Under Section 1 of this act it is the duty of the person designated by the board of supervisors "to look after and cause to be interred," etc., the body of the deceased veteran or widow "who shall hereafter die not having means sufficient to defray the necessary funeral expenses."

Under Section 2 it is the duty of the person so appointed "before he assumes the charge and expense of any such burial to first satisfy himself by careful inquiry into and examination of all the circumstances in the case that the family * * * is unable for want of means to defray the expenses of such funeral or burial." Whereupon "he shall cause such deceased soldier * * * to be buried" and shall report the facts to the board of supervisors.

From the above it will be observed that the investigation must be made by the person designated by the board of supervisors, that he must find the inability to pay for the burial to exist and that he must have caused the body to be buried as provided in the act. The absence of a compliance with any one of these three requirements would warrant the board of supervisors or board of county auditors, as the case might be, in refusing to allow the claim. The fact that the widow was the beneficiary of an assessment levied as indicated in the letter of Mr. Gill could properly be taken into consideration in determining the question of the ability or inability of the family to pay the expenses of burial. The board of county auditors could not be compelled to allow the claim if the provisions of the statute had not been fully complied with.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o.

HOMERULE ACT. ERRORS. Where errors occur in proceedings incident to the incorporation of a city proceedings should be dismissed and a new action taken.

February 23, 1911.

Mr. Dwight H. Fitch, Prosecuting Attorney, East Jordan, Michigan:

Dear Sir—I have your communication of February 18th in which you submit a number of inquiries arising under Act No. 279 of the Public Acts of 1909, relating to the proposed incorporation of the City of East Jordan. You state that the petition presented to the board of supervisors correctly stated the description of the territory to be incorporated but that an error in the description was made in the resolution passed by the board of supervisors. You ask if this error would invalidate the election.

In view of my conclusion in answer to your second inquiry I deem it unnecessary to pass upon this question at this time.

Your second inquiry is as follows:

“As provided in Sec. 10 of the Act the county clerk transmitted the certified copies to the township clerk of South Arm township and the village clerk of East Jordan. The township clerk gave the notice of the election required and the election was held thereunder, all persons in the township and village being allowed to vote on the question of incorporation. One voting place was used as is the custom in all township elections, the village of East Jordan being wholly within the said township. The boundaries of the proposed city differ materially from those of the present village. The village clerk gave no notice whatever, acting under the belief that the whole township constituted the territory to be affected by the proposed change and a separate election in the village was impracticable—in fact almost impossible. That the village being wholly within the township notice to the township was notice to the village. Question: Is the village clerk required to give the notice under such circumstances, and if so what is the effect of his failure to do so?”

It is my understanding from the above quotation that all of those who voted voted in one place regardless of whether they resided in the village or in the territory to be added. Section 9 of Act 279 of the Public Acts of 1909, requires that the proposed consolidation or changes of boundaries be submitted to the qualified electors:

“And at the election when said question is voted upon the city, village or township shall conduct the election in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed or detached in a separate box from the one containing the votes from the remaining portions of such city, village or township, and if the returns of said election shall show a majority of the votes cast in the district proposed to be annexed, *voting separately*, to be in favor of the proposed change of boundaries and if a majority of the electors voting in the remainder of the district to be affected as herein defined, voting collectively, are in favor of the proposed change of boundary, then such territory shall become a part of the corporate territory of the city or shall be detached therefrom as the case may be.”

Section 10 of the said act requires the county clerk to transmit a certified copy of the petition to the clerk of each city, village or township in the district to be affected and further makes it the duty of each city, village or township clerk to give notice of the date and purpose of the election.

It is my understanding from your statement that there has not been a compliance with either of these sections. These requirements would seem to me to be jurisdictional. At any rate there are too many matters involved to have the entire validity of the proposed incorporation shrouded in doubt. I would respectfully suggest that all proceedings which have been instituted be dropped and begun anew. This in the end may be the most satisfactory course to pursue.

You also inquire whether the village election should be held on the second Monday in March. It is my opinion that it should.

You also inquire whether you may insert initiative, referendum and recall measures in your proposed charter. I have heretofore purposely refrained from passing upon this question. I understand that a number of cities have inserted such provisions in the proposed charter but I would not care at this time to advise definitely.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

COUNTY ROAD LAW. BOARD OF SUPERVISORS. Where the Board of Supervisors neglected to prescribe the form of ballot for submitting the proposition of bonding for county roads, a special meeting should be called to remedy the defect.

February 24, 1911.

Henry G. Reek, Prosecuting Attorney, Ludington, Michigan:

Dear Sir—We are in receipt of your letter of February 21st, in which you state that the board of supervisors of your county passed a resolution for the submission to the qualified electors of the question of bonding the county in the sum of \$105,000 for constructing county roads but failed to state in the resolution the form of ballot upon which the question should be submitted as required by Section 22 of Chapter 4 of Act 283, Public Acts of 1909, which provides:

“The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors.”

You state there is still time to call another meeting of the board of supervisors if it should be deemed necessary but desire an opinion upon the question as to whether the failure to comply with the above statutory provision would affect the legality of the bonds.

It is our view that the omission to comply with the statute should be corrected by calling another meeting of the board of supervisors. Certainly the omission to comply with the plain requirements of the statute is a serious if not a fatal defect and might result in the invalidation of the entire bond issue. It certainly would render the bonds open to serious question and would undoubtedly seriously impair their value. Without undertaking to decide the legal question submitted, it is our

view that a special meeting of the board of supervisors should be called and the resolution presented in the form required by statute.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

PRIMARY ELECTION LAW. ENROLLMENT. MINOR. Person who has enrolled in one precinct but moves to another precinct may be enrolled on primary election day.

Person who has become 21 years of age since last enrollment day may be enrolled on primary election day.

February 24, 1911.

Mr. George W. Sample, Attorney-at-Law, Ann Arbor, Michigan:

Dear Sir—I have your communication of February 18th, in which you submit inquiries under the primary election law. You ask:

1. Can a party moving from one ward or township to another since the last enrollment day and now being entitled to vote in the ward where he resides be enrolled and vote on the first day of March?

2. Can a person who has become twenty-one years of age since the last enrollment day make application and be enrolled and vote at the primary election March first?

In reply to the above inquiries your attention is respectfully challenged to the provisions of Section 10 of Act 281 of the Public Acts of 1909, the general primary election law. This section specifically provides that:

“Any person who may have become twenty-one years of age or a qualified elector after enrollment day may have his name enrolled by the board of primary election inspectors on any primary election day upon making oath as provided in the general election law relative to the registration of electors on election days; or any person who was duly enrolled in the manner herein provided but who has changed his residence to any election precinct other than that in which he was enrolled, may be enrolled in the new election precinct and may vote therein.”

The proviso in said section indicates the course to be pursued in case a person has changed from one voting precinct to another.

Accordingly, it is my opinion that a person who was enrolled in one precinct but who has moved to another precinct may be enrolled on the first Wednesday in March, which is a primary election day, provided he follows the steps outlined in said Section 10. It is also my opinion that a person who has become twenty-one years of age since the last enrollment day may be enrolled at the primary election to be held on the first Wednesday in March.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

HOUSE OF REPRESENTATIVES. SPEAKER. COMMITTEE CLERKS. Speaker of house of representatives has the right to dismiss a committee clerk at any time and appoint another in place of the one dismissed.

February 24, 1911.

Hon. H. F. Baker, Speaker, House of Representatives, Capitol, Lansing:

Dear Sir—I have your communication of February 23d, which reads as follows:

“In accordance with House Resolution No. 9, adopted January 4th, certain employes of the House have been appointed by the Speaker.

I am interested to know what power of dismissal the Speaker may exercise with regard to such employes.”

In reply thereto would say I understand that your inquiry relates to the power of the Speaker to dismiss a committee clerk. The appointment of committee clerks is authorized by the provisions of Act 85 of the Public Acts of 1907. The time for which committee clerks are to be appointed or employed is not prescribed by statute. The method of payment is a per diem compensation for those clerks employed with the consent of the House of Representatives or by any standing or special committee. I understand it to be the practice of the House to pass a resolution prescribing the number of committee clerks to be appointed and conferring the authority to appoint in the Speaker. This practice was followed by the present legislature. House Resolution No. 9, reads in part as follows:

“Resolved, That the Speaker appoint ten committee clerks, five of whom shall be competent stenographers and the others competent typewriters, such committee clerks to be at the service of the members of the House for such stenographic work as pertains to their official duties.” (House Journal, page 22.)

I understand that you as Speaker appointed the prescribed number of clerks. The sole power to appoint these clerks was therefore vested in the Speaker. They were not appointed for any designated or specific time. The committee clerks are not officers. They perform clerical duties and occupy positions of employment. If, however, under the circumstances it could be said that these clerks are officers, the Speaker would have the power to dismiss any one of them at any time. The general rule is that “Where an office is filled by appointment and a definite term of office is not fixed by constitutional or statutory provisions, the office is held at the pleasure of the appointing power and the incumbent may be removed at any time.” (Throop on Public Officers, pp. 304, see also p. 354.)

If the above is the proper rule to be applied in the case of any officer, it is equally the rule to be applied in the case of a clerk or employe. It is the duty of the Speaker to appoint the necessary number of committee clerks for the service of the members of the House, in accordance with the foregoing resolution. While this resolution stands, the House could not interfere with the discretionary power vested in the Speaker so long as the required number of committee clerks are appointed and present.

It is my opinion that in accordance with the resolution passed by the house and now in force, the Speaker possesses the power to dismiss a committee clerk at any time and appoint another in place of the one so dismissed.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L.

COUNTY ROAD SYSTEM. BOARD OF SUPERVISORS. The Board of Supervisors has authority to submit the proposition of bonding for county roads upon their own initiative and without a petition of free-holders.

February 24, 1911.

Mr. Virgil I. Hixson, Prosecuting Attorney, Manistique, Michigan :

Dear Sir—We have examined the question submitted by you in your letter of February 12th as to the power of the Board of Supervisors to submit a bonding proposition to raise money for the construction and maintenance of county roads without the petition of free holders and in reply will say that section 22 of chapter four of act 283 of the Public Acts of 1909 provides :

“Whenever the board of supervisors of the county by a majority vote of all the members elect resolve to contract indebtedness or issue bonds to raise money for the construction and maintenance of county roads, the question shall be submitted to a vote of the electors of the county at a general or a special election called for that purpose. Notice of the submission of such resolution to a vote of the electors and, in case a special election is called, notice of the calling of such special election shall be given in the same manner and for the same length of time as now prescribed by law. If a majority of the electors voting on such resolution shall vote in favor thereof, it shall be deemed to have carried. The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors. No bond or evidence of indebtedness shall be negotiated at less than par and the accrued interest. All money raised by the board of supervisors for the construction and maintenance of county roads shall be expended under the direction of the board of county road commissioners.”

This is in the chapter of the general highway law devoted to the county road system.

Sections 17 and 18 of chapter fourteen of said act, to which you make reference, are part of a chapter in the general highway law principally devoted to the township highway system. Although it is apparent that sections 15 to 18 of chapter fourteen are intended to apply to counties having a county road system, a careful examination of these sections convinces us that they are not inconsistent with the provisions of section 22 of chapter four, above quoted.

We are of the opinion that you have correctly advised your board of supervisors that their action was legal in submitting the question of bonding for the construction and maintenance of county roads upon

their own initiative and without a petition of twenty-five free holders, or a plan of improvement laid out by the board of county road commissioners.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CORPORATIONS. A foreign trust company may be admitted to do business in this State to conduct the following business: "To take title to real estate located in the State of Michigan and pursuant to such trust to subdivide and re-subdivide and to sell and convey the same in whole or in parts from time to time."

February 24, 1911.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—Under date of January 18, 1911, you transmitted to this department the application of the State Bank of Chicago, Illinois, for admission to this State as a foreign corporation to conduct the following business:

"To take title in trust to real estate located in the State of Michigan and pursuant to such trust, to subdivide and re-subdivide, to sell and to convey the same in whole or in parts from time to time." and requested our opinion as to your authority to admit said State Bank of Chicago to do such business in this State.

Since receiving the letter, above mentioned, we have conferred with the Hon. Axel Chytraus, the attorney for said bank, who has filed with us a brief presenting his views upon the question involved and has transmitted to us additional papers and information relative to the powers of the State Bank of Chicago, under the law of its incorporation.

From an examination of the papers submitted and the statutes under which the bank is organized, it appears that the State Bank of Chicago has power in its home state, under its charter, to take and hold real estate in trust and to sell and dispose of the same. It also possesses the usual powers of a corporation to take, hold and convey such real estate as is necessary to enable it to carry out its corporate purposes.

Our foreign corporation statute, Act 206 of the Public Acts of 1901, as amended, contains no limitation as to the purposes for which a foreign corporation may be admitted to do business in this State, except as stated in the proviso in Section 4:

"That no such foreign corporation shall be permitted to transact business in this state unless it be incorporated in whole or in part for the purposes or object for which a corporation may be formed under the laws of Michigan and then only for such purpose or object."

Our general corporation law, Act 232 of the Public Acts of 1903, authorizes corporations to be organized under the laws of this State among other purposes for the following:

"For the purchasing, holding and dealing in real estate."

And,

"For carrying on any other lawful business except such as are excluded by section 36 of this act."

Said Section 36 provides that this act shall not include or apply to any of the corporations provided for in certain enumerated chapters of the Compiled Laws of 1897, including chapter 162 (section 6156 et seq Compiled Laws) providing for the organization of trust, deposit and security companies. It is apparent then that the purpose for which the State Bank of Chicago seeks admission is a purpose for which a corporation may be formed under the laws of Michigan and that as far as the strict letter of our foreign corporation law is concerned, it is entitled to admission, either under Act 232 of the Public Acts of 1903 or chapter 162 of the Compiled Laws.

However, the supreme court of this State has indicated that notwithstanding the broad language of Act 206 of the Public Acts of 1901, as amended there are limitations based on reasons of policy on the power of the secretary of state to admit foreign corporations to do business in this State. (*New York Mortgage Company vs. Secretary of State*, 150 Mich. 199). In that case the relator sought admission for the following purpose:

"To make loans secured by mortgages on real estate, to sell such mortgages and bonds of this company secured by mortgages on real estate, but said bonds are not to be sold on the installment plan."

After holding that this purpose came within Act 205 of the Public Acts of 1877 (since repealed) entitled, "An act to provide for the incorporation of societies for the receiving, loaning and investing of money," which act required an investment of \$100,000 of its capital stock in real estate, examination by and reports to the commissioner of the banking department who had power, under certain conditions to institute dissolution proceedings, the court there held, page 202:

"It is evident that the legislature never intended to make such discrimination against the citizens of this State, and never intended to include within this statute and admit to this State foreign corporations to do a business of the kind relator is engaged in, of such peculiar nature, that the legislature has in its wisdom, for the protection of its citizens, put such business under official supervision, care and control.

The matter of admitting foreign corporations to do business in a state is absolutely within the discretion of the legislature. It is granted, not as a matter of right, but as a matter of comity. *Hartford Fire Insurance Co. vs. Raymond*, 70 Mich., at pages 501-2, and cases cited. This comity is never extended by States 'where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy.' *Justice Field in Paul vs. Virginia*, 8 Wall (U. S.) 168. Our construction of the act is that banking corporations and those corporations which are within the contemplation of our banking laws are not within the provisions of the act authorizing foreign corporations to transact business in this State."

It may further be said that as a matter of departmental practice the view expressed in this opinion has been followed in the offices of the insurance commissioner and secretary of state since the passage of Act 206 of the Public Acts of 1901, to the end that insurance companies have not been admitted under the provisions of Act 206, but have been required to comply with the various provisions of the insurance laws, relative to foreign companies; and foreign banks and trust companies have consistently been refused admission. We, therefore, have no hesitancy

in holding that the State Bank of Chicago is not entitled to admission under the trust statute, chapter 162 of the Compiled Laws of 1897.

It will be noted that the purpose for which the State Bank of Chicago seeks admission is not to do a general trust company business. An examination of the purposes stated in the application discloses that it does not contemplate the acceptance of trusts of any kind in this State, nor the execution of trusts in this State, except the taking of title to and conveyance of real estate situated in Michigan. In other words, the purpose for which the State Bank of Chicago seeks admission in Michigan is within the purpose of "purchasing, holding and dealing in real estate," for which a Michigan corporation may be organized under Section 1 of Act 232 of the Public Acts of 1903. The limitation of purposes stated in the application to the taking of title in trust arises by virtue of the limitation of authority under its corporate charter, which permits it to take title to real estate in general only as a trustee. The purpose then for which it seeks admission is narrower than and entirely included within a purpose enumerated in Section 1 of Act 232 of the Public Acts of 1903 and so far as its present application is concerned, it stands on no different footing than a New Jersey corporation; for example, possessing the power to own and operate railroads, do a banking or a trust company business and possessing other very general powers, making application for authority to do a manufacturing business within the State of Michigan.

It is, therefore, our view that you have authority to admit the State Bank of Chicago to do business in Michigan for the purpose stated in its application, upon compliance by it with the requirements of Act 206 of the Public Acts of 1901, as amended.

It may not be out of place to state that the State Bank of Chicago is one of the strong financial institutions in that city and from the statement furnished and other information at hand concerning it, there is no objection on the ground of policy based on its methods of doing business, such as appeared in the case of the New York Mortgage Company vs. Secretary of State, *supra*.

We know of no statute which would exclude a foreign corporation from admission to do business in this State by reason of the fact that the word "bank" occurs in its corporate name. If, after its admission, it holds itself out as authorized to do a banking business in this State, proper proceedings may be instituted to prevent it from so doing and to prevent any misuse of the word "bank" in its corporate name.

The application of the State Bank of Chicago is herewith returned and also find enclosed certified copy of the incorporation papers sent us by Judge Chytraus.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-encls.

VILLAGE CHARTER: REFERENCE PROVISIONS: All provisions of village charter should be set forth in full.

February 24, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I have before me the various communication relating to the proposed charter for the village of Akron, which have been referred to this department.

In reply thereto would say we are aware of the provisions of Section 25 of Act 278 of the Public Acts of 1909, providing that each village may adopt its charter or any part of the same by proper reference and had the same in mind at the time we wrote you upon this subject. As I recall the proposed charter did not contain a single section, but it was purely a "reference" proposed charter. I do not believe it was the intent of the legislature to have a proposed charter submitted in the form in which the proposed charter in question was submitted. I can understand how if the framework is set forth, it is a proper matter to have inserted sections or chapters of the statute by reference. I believe it was not the intent of the legislature to require the Governor to be forced to devote his time to finding in our statutes and laws such sections and chapters as may have been referred to by the charter commission. It will be necessary sometime for all those sections proposed to be included in the proposed charter to be gathered together. That should be done now and submitted to you for your consideration.

The correspondence is herewith returned.

Yours very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m.

UNIVERSITY OF MICHIGAN. RIGHT OF LEGISLATURE TO DETERMINE ENTRANCE REQUIREMENTS. The Legislature has no right to determine the entrance requirements for entrance to the University of Michigan.

February 24, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing, Michigan:

Dear Sir—I have your communication of February 15th, in which you ask "may the legislature determine the entrance requirements for admission to the University of Michigan, or is that power constitutionally lodged in the board of regents."

In reply thereto would say Section 5 of Article XI of the constitution provides, in part, that:

"The board of regents shall have the general supervision of the University and the direction and control of all expenditures from the University funds."

The foregoing provision is also to be found in the constitution of 1850. Section 10 of Article XI of the constitution provides that:

"The Legislature shall maintain the University, the College of Mines, the State Agricultural College, the State Normal College, and such State normal schools and other educational institutions as may be established by law."

The latter quoted section is a new provision and was not contained in the constitution of 1850. The foregoing I believe to be the only constitutional provisions directly bearing upon the question submitted.

It is believed that your inquiry is answered by the decisions of our supreme court. In *People vs. Regents of the University*, 4 Mich. 104, there was an attempt made to compel the regents of the University to establish a professorship of Homeopathy in the institution, in accordance with the provisions of a legislative act. The supreme court refused to issue a writ of mandamus to compel the board of regents to establish a professorship on the ground that the legislature attempted in the passage of the act in question to interfere with the discretionary powers of the board of regents and that the general supervision of the University and the direction and control of its affairs was vested by the constitution in the board of regents.

In *Sterling vs. Regents of the University*, 110 Mich. 369, an act was considered by the supreme court the provisions of which attempted to compel the regents of the University to remove the Homeopathic medical college from Ann Arbor to Detroit, the court held:

"That the board of regents could not be compelled by the Legislature to act contrary to its judgment if the board of regents were not disposed to follow the provisions of the legislative act."

In *Weinberg vs. Regents of the University*, 97 Mich. 254, the only question presented was whether the board of regents was required to secure a bond for the payment by the contractor and also sub-contractors of all labor performed upon and materials used for any public buildings. The court in that case, through Mr. Justice Grant, said:

"Under the constitution the State cannot control the action of the regents. It could not add to or take away from its property without the consent of the regents. In making appropriations for its support the legislature may attach any conditions it may deem expedient and wise and the regents cannot receive the appropriation without complying with the conditions. This has been done in several instances."

The foregoing decisions would clearly indicate that the Legislature does not possess the right to interfere with the control or the supervision of the University of Michigan. If the legislature may determine the entrance requirements for admission, it may go a step further and determine the course to be pursued after the student is admitted. It is believed that this is not a legislative prerogative. Practically the only new provision inserted in the new constitution relating to this matter is said Section 10 of Article XI, as above quoted. This section, however, could not be construed to take from the board of regents that power which our supreme court has said it possesses.

It is my opinion that the Legislature does not possess the right to determine the entrance requirements for admission to the University of Michigan. This conclusion is in accord with opinions rendered by ex-

attorney general Horace M. Oren and ex-attorney general John E. Bird. (See Attorney General's Report of the year 1901, page 87 and Attorney General's report of the year 1908, page 94.)

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

RAILROADS. In determining the rates of fare for the transportation of passengers upon railroads, under Act 288 of the Public Acts of 1909, the passenger earnings are distributed over that part only of the railroad over which regular passenger service is maintained.

February 24, 1911.

Michigan Railroad Commission, Lansing, Michigan:

Gentlemen—I am in receipt of your letter of February 15th, requesting an opinion as to the proper interpretation of subdivision ninth, Section 9, Article II of Act 198 of the session laws of 1873, as amended by Act 288 of the Public Acts of 1909, in relation to the rates of fare for the transportation of passengers upon railroads in this State. The subject of controversy is whether or not in determining such rates of fare, passenger earnings shall be distributed over the entire mileage of a railroad or over that part only of the railroad over which regular passenger service is maintained.

For reply thereto would say that the provisions of said Section 9, so far as the same are material here, reads as follows:

“Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following. * * * * Ninth, To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for transporting any passenger and his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, shall not exceed the following prices, viz.: For a distance not exceeding five miles in the lower peninsula, three cents per mile, and for a distance not exceeding ten miles in the upper peninsula, four cents per mile; for all other distances for all companies the gross earnings of whose passenger trains, as reported to the commissioner of railroads for the year nineteen hundred six, equaled or exceeded the sum of one thousand two hundred dollars per mile for each mile of road operated by said company, on which regular passenger service is maintained, two cents per mile, and for all companies whose earnings reported as aforesaid were less than one thousand two hundred dollars per mile of road operated by said company, three cents per mile: Provided, That in the future, whenever the earnings of any company doing business in this State, as reported to the railroad commission at the close of any year, shall increase so as to equal or exceed the sum of one thousand two hundred dollars per mile of road operated by said company, then in such case said company shall thereafter upon the notification of the railroad commission be required to only receive as compensation for the transportation of any passenger, his or her ordinary baggage, not exceeding in weight one hundred fifty pounds, a rate of two cents per mile as here-

inbefore provided: Provided further, That in computing the passenger earnings per mile of any company the earnings and mileage of all branch roads owned, leased, controlled or occupied or that may hereafter be owned, leased, controlled or occupied by such company, shall be included in the computation, and the rate of fare shall be the same on all lines owned, leased, controlled or occupied by such company."

It will be noted that the reference in the first part of this Section is to railroads whose gross earnings, as reported to the commissioner of railroads for the year 1906, equaled or exceeded the sum of \$1,200 "per mile for each mile of road operated by said company on which regular passenger service is maintained," while in the succeeding provision the reference is to the railroads whose earnings in the future increase so as to equal or exceed the sum of \$1,200 "per mile of road operated by said company."

As to the first provision of this section there is no uncertainty. The computation of earnings is based only on the mileage over which regular passenger service is maintained. Was it intended that as to the railroads whose earnings in the future equal or exceed \$1,200 per mile, the earnings should be computed upon the entire mileage of the railroad whether or not passenger service was regularly maintained thereon? Or was it intended that in all cases the earnings should be computed upon the mileage of the road over which passenger service is regularly maintained?

The approved rule in the interpretation of statutes is thus stated in Lewis' Sutherland Statutory Construction, Section 347:

"It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it. When the subject-matter is once clearly ascertained and its general intent, a key is found to all of its intricacies; general words may be restrained to it, and those of narrower import may be expanded to embrace it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention."

Also Section 348:

"Not only may the meaning of words be restricted by the subject-matter of an act or to avoid repugnance with other parts, but for like reasons they may be expended. The application of the words of a single provision may be enlarged or restrained to bring the operation of the act within the intention of the legislature, when violence will not be done by such interpretation to the language of the statute. The propriety and necessity of thus construing words are most obvious and imperative when the purpose is to harmonize one part of an act with another in accord with its general intent. The statute itself furnishes the best means of its own exposition; and if the intent of the act can be clearly ascertained from a reading of its provisions, and all its parts may be brought into harmony therewith, that intent will prevail without resorting to other aids for construction. The intention of an act will prevail over the literal sense of its terms."

The subject-matter of this statute is the regulation of passenger fares upon the railroads and the object sought to be accomplished is the carriage of passengers at a rate not exceeding two cents per mile when the passenger earnings of the railroad would equal or exceed \$1,200

per mile. The declared intention of the legislature in the first provision of the statute is that the computation of earnings shall be based upon the mileage over which regular passenger service is maintained. It is exceedingly difficult to hold that the Legislature intended to discriminate against those companies whose earnings in 1906 equaled or exceeded \$1,200 per mile by the application of a different computation to those companies whose earnings since 1906 equaled or exceeded that sum. In the original two-cent passenger fare law (Act 54 of the Public Acts of 1907) no such discrimination was made between the two classes. By the terms of that law, the computation was based upon the earnings "for each mile of road operated." The amendment of 1909 added to this clause the words "on which regular passenger service is maintained."

The evident intention of the legislature by the amendment of 1909 was to change the basis of computation, so that the earnings should be computed only upon mileage on which regular passenger service is maintained; and it seems to me clear that it was also the intention that the change in the method of computation should apply to all railroads, notwithstanding the failure on the part of the legislature to express that intention in so many words. To so interpret the statute does away with any discrimination between the two classes; harmonizes the various provisions of the statute and gives full force and effect to the evident intention of the legislature.

It is, therefore, my opinion that in computing the earnings of railroad companies under this statute, the computation should in all cases be based upon the mileage on which regular passenger service is maintained.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

OFFICE. VACANCY IN OFFICE OF JUDGE OF PROBATE. RIGHT OF GOVERNOR OR BOARD OF SUPERVISORS TO CALL SPECIAL ELECTION. Where a vacancy occurs in office of judge of probate more than six months before the next general election, governor is without authority to order a special election to fill vacancy.

A special election, however, may be called to fill the vacancy by the board of supervisors.

February 24, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I have your communication of February 18th, enclosing copy of communication from W. H. Jobe, Chairman of the Republican County Committee of Stambaugh, Michigan. It appears from Mr. Jobe's communication that there was a vacancy in the office of judge of probate in December, 1910, and that an appointment to fill such vacancy was made. You ask to be advised whether the Governor has authority to order a special election to fill the vacancy in the office of judge of probate.

In reply thereto would say the person appointed, presumably by the

Governor, to fill vacancy would hold office until his successor is elected and qualified. (See Section 20, Article VII of Constitution.)

The method of calling special elections is expressly provided for by statutes. (See Sections 3595 to 3603 inclusive, Compiled Laws of 1897.)

Subdivision 4 of Section 3596 of the Compiled Laws of 1897 provides for a special election:

"When a vacancy shall occur in either of the said county offices after the commencement of the term of service and more than six months before the next general election."

County offices as used in the above quoted statute includes judges of probate. (See Section 3595 of the Compiled Laws of 1897.) If the election to be held in April, 1911, is a general election within the terms of the above quoted statute, such quoted statute cannot apply as the vacancy did not occur more than six months before the next general election. I am inclined to believe, however, that the election to be held in April, 1911, is not a general election within the terms of the above quoted statute, but the general election contemplated was the next general election to be held in November.

Section 3599 of the Compiled Laws of 1897, provides that:

"Special elections for the choice of the county officers named in Section 1 of this act shall, except in cases in which a special election is to be ordered by the Governor, be ordered by the board of supervisors."

Since the vacancy in question occurred more than six months before the next general election the Governor is without authority to order a special election to fill the vacancy. A special election may, however, be called to fill the vacancy by the board of supervisors.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

GOVERNOR. SUPERINTENDENTS OF POOR. The Governor has no authority to remove from office a county superintendent of poor.

February 24, 1911.

Mr. Bird J. Vincent, Asst. Prosecuting Attorney, Saginaw, W. S., Michigan:

Dear Sir—We are in receipt of your letter of February 22d in which you inquire whether the Governor has jurisdiction under Section 11384 Compiled Laws to entertain removal proceedings against a superintendent of the poor, or whether the board of supervisors of the county making the appointment alone have the authority to remove under this section.

In reply thereto would say that Section 11384 contains this provision:

"And it is hereby made the duty of the Governor or other appointing power upon proof satisfactory of a violation of the provisions of this section to immediately remove the officer or employe offending as aforesaid."

The act is directed against officers, employees or members of boards of State institutions or county institutions. Many, in fact most of the officers of state institutions included are appointed by the Governor. Some are appointed by the boards having control of the institutions. The

words "or other appointing power" lead us to the conclusion that the Governor has no jurisdiction to remove under this section unless he is the appointing power so that, for example, a steward or medical superintendent of a state asylum could not be removed by the Governor for violation of the provisions of this act but would be subject to removal by the board of control of the institution which appointed him. The same principle would apply to the case submitted by you. We are therefore of the opinion that the Governor would be without jurisdiction to remove a county superintendent of the poor appointed pursuant to law by the board of supervisors for conduct amounting to a violation of the provisions of Section 11384.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-k-o.

ANTI-TRUST LAW: IMMUNITY FROM PROSECUTION AND PUNISHMENT: Amendment to anti-trust law granting immunity from prosecution and punishment to persons testifying to matter tending to incriminate them is valid.

February 24, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing, Michigan:

Dear Sir—I have examined the provisions of Senate Enrolled Act No. 1, amending Act 255 Public Acts of 1899, known as the anti-trust law, by granting immunity from prosecution and punishment to persons testifying to matter tending to incriminate them, in proceedings under that law.

My examination leads me to the conclusion that the proposed amendment is valid and unobjectionable. A similar provision has been enacted by Congress, and this provision has been sustained by the Supreme Court of the United States against the objection that it was in violation of the Fifth Amendment to the Constitution of the United States, which like the Constitution of Michigan, provides that:

"No person shall be compelled in any criminal cases to be a witness against himself."

Constitution U. S., Fifth Amendment,
Constitution Mich., Art. II, Sec. 16,
Fed. Statutes Annotated, Vol. 3, p. 855,
Brown v. Walker, 161 U. S. 595.

I have also consulted with the United States District Attorney's office for the Eastern District of Michigan and am informed that that office finds this provision wholly unobjectionable. I know of no objection to the proposed amendment, and believe it would be sustained in the courts.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

L-k-o.

JUDGE OF PROBATE. FEES. For furnishing copy of the decree for specific performance required to be recorded with the deed in the office of the register of deeds.

February 24, 1911.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Michigan:

Dear Sir—We are in receipt of your letter of February 15th, in which you inquire whether a judge of probate is entitled to a fee for furnishing a certified copy of the decree for specific performance required to be recorded with the deed in the office of the register of deeds under Section 9476 of the Compiled Laws of 1897.

In reply thereto would say that it is our view that it is the duty of the executor and not the judge of probate to see to it that the certified copy of the decree is recorded. It is therefore our view that the preparation of this certified copy is not a part of the official duty of the judge of probate within the rule laid down in our former opinion to you, and we therefore hold that you are entitled to collect statutory fees for the preparation of a certified copy of the decree to be recorded with executor's deed under the provisions of Section 9476 Compiled Laws.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-k-o.

INCOMPATIBILITY. SUPERVISOR AND MEMBER OF THE BOARD OF EDUCATION. The offices of supervisor and member of the board of education are incompatible.

March 3, 1911.

Mr. William J. Miller, Attorney-at-Law, Rapid River, Michigan:

Dear Sir—Your letter of the 24th ult. received. Therein you ask if one man can lawfully hold the offices of supervisor and member of the board of education at the same time. You say that you have held the offices incompatible in view of Section 4772 of the Compiled Laws of 1897, but that you have since discovered that said section 4772 has been amended by Section 8 of Act 32 of the Public Acts of 1909.

In reply would say that under Section 4772 of the Compiled Laws of 1897, the two offices referred to would unquestionably have been incompatible but under said section as amended by Section 8 of Act 32 of the Public Acts of 1909, a somewhat different question is presented. Section 8 of Act 32, Public Acts of 1909 provides, in part:

"The township board of each township containing primary school districts and in the case of fractional school districts the township board of the township in which the district schoolhouse thereof is situated, shall have power and is hereby required to remove from office, upon satisfactory proof, after at least five days' notice to the party implicated, any district officer who shall have illegally used or disposed of any of the public moneys entrusted to his charge, or who shall persist-

ently and without sufficient cause refuse or neglect to discharge any of the duties of his office: Provided, That the power of the township board to remove school officers from office shall not apply when the township is organized as a school district."

Therefore if your township is organized as a school district and we are led to believe from your letter that it is, then it comes directly under the proviso which says that the power of the township board to remove school officers shall not apply when the township is organized as a school district. And therefore the incompatibility under that section between the offices of member of the township board of education and supervisor who is a member of the township board would be removed.

You also refer us to Section 21 of Act No. 117 of the Public Acts of 1909, which provides, in part:

"The several township officers shall be ineligible to election as members of the board of education during the term for which they were elected and any votes cast for such township officers for members of the board of education shall be void."

In the case presented in your letter a man was elected to the board of education in July, 1909, and in April, 1910, was elected supervisor. Therefore this case would not come directly under the above inhibition by reason of the fact that he was not a township officer when elected to the board of education but became one after such election. However, we are of the opinion that in the above section last quoted it was manifestly the intention of the legislature to prohibit one man from holding any township office and membership on the board of education at the same time and therefore when a man accepts the office of supervisor, ipso facto he vacates the office of member of the board of education.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

MICHIGAN SOLDIERS' HOME. The Commandant of the Michigan Soldiers' Home is not entitled to compensation for services as guardian of inmates of said home.

March 3, 1911.

Hon. Judson E. Rice, Commandant, Michigan Soldiers' Home, Grand Rapids, Michigan:

Dear Sir—Replying to your letter of February 27th, relative to your compensation for guardianship of soldiers, will say that under the statute, Section 4 of Act 54, Public Acts of 1901, you are not entitled to compensation for your services as guardian of soldiers confined in said home. The section provides as follows:

"The commandant of said home shall receive no fees or allowances as compensation for his services as such guardian but actual reasonable expenses incurred in the execution of his trust may be allowed."

We do not think the judge of probate would have any right to allow you any amount as compensation for your services as guardian. You are

not required, however, to put yourself to any personal expense in the matter of the guardianship of any of your wards without being reimbursed for the expense so incurred.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

JUVENILE COURT LAW. JUDGE OF PROBATE. The Judge of Probate is not required to designate a woman to accompany a girl to the Industrial Home at Adrian.

March 3, 1911.

Hon. Fred R. Walker, Judge of Probate, Traverse City, Michigan:

Dear Sir—We are in receipt of your letter of the 28th ult., in which you submit the following inquiry:

“When a girl is ordered conveyed to any institution by the juvenile court, is it advisable to place her in the care of the county agent, or appoint a suitable woman to accompany her to the institution, especially when the girl is upwards of sixteen years old?”

In reply thereto will say that Section 5 of Act 310, Public Acts of 1909, amending the juvenile court law, provides that:

“The child shall be placed in the care of the county agent, juvenile matron or some reliable person designated by the court other than the sheriff, to be conveyed to the institution.”

This is a change from the provision of the statute as originally enacted which made it necessary for both the county agent and a suitable woman to accompany a girl in all cases. See Section 5, Act 6, Extra Session of 1907. It is undoubtedly within your power to designate the county agent to take a girl sixteen years of age to the industrial home but we hardly think it would be advisable to make such designation. The matter is wholly within the discretion of the court as you will note from the above quotation.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o

PLAT LAW. TOWNSHIP BOARD. It is within the discretion of the township board to accept a plat submitted under the General Plat Law.

March 3, 1911.

Mr. H. C. Eichel, Fremont, Michigan:

Dear Sir—We are in receipt of your letter of March 1st, in which you submit the inquiry as to the authority of the township board to refuse to accept the plat of certain land promoters.

In reply thereto will say that in approving a plat the township board, in our judgment, assumes the responsibility for the care of the streets and highways laid out on said plat and dedicated to the public use. It is our opinion that it is a matter of discretion to be exercised by the township board as to whether it desires to accept a plat and thus make

the streets therein laid out public highways for the care and maintenance of which the township will become responsible, and that any reasonable discretion exercised by the township board in refusing to approve such plat would not be disturbed by the courts. We are therefore of the opinion that under the circumstances outlined in your letter the township board would have authority to refuse to accept the plat in question.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o

STATE LIVE STOCK SANITARY COMMISSION. State Live Stock Sanitary Commission has authority to prevent the entry of stock into an affected district within the State of Michigan by a quarantine proclamation properly posted.

The State Live Stock Sanitary Commission has no authority to prohibit the shipment into this State from other states of animals not infected with contagious or infectious disease.

March 3, 1911.

Mr. C. A. Tyler, Secretary, State Live Stock Sanitary Commission, Coldwater, Michigan:

Dear Sir—We are in receipt of your letter of February 27th, enclosing copy of a quarantine notice recently posted by your commission, and inquiring whether the commission has the authority to issue and maintain such an order.

In reply thereto will say that the order enclosed prohibits the bringing into this State of live stock from two counties of the state of Indiana. We do not think the commission has authority to make such an order for the reason that it would be an interference with interstate commerce. Regulations similar to the one contained in this notice have been held unconstitutional by the United States supreme court. Upon the general power of the State Live Stock Sanitary Commission to establish a quarantine, we will say that we are of the opinion that they have this right in a proper case. Section 7 of Act 172 Public Acts of 1909, requires the State Live Stock Sanitary Commission, after a report has been made to it, to:

“Prescribe such rules and regulations as in its judgment the exigencies of the case may require for the effectual suppression and eradication of the disease and for that purpose the said commission may list or describe the domestic animals affected with such disease and those which have been exposed thereto and included within the infected district so defined and quarantined with such reasonable certainty as would lead to their identification and no domestic animal liable to become infected with the disease or capable of communicating the same shall be permitted to enter or leave the district, premises or grounds so quarantined except by authority of the commission.”

While it is true that Section 7, as amended by Act 172 Public Acts of 1909, omits the express authority to quarantine which was given the commission under Section 5629 Compiled Laws, yet we think the power

to quarantine is included within the power conferred to "prescribe such rules and regulations as in its judgment the exigencies of the case may require for the effectual suppression and eradication of the disease." To this end we think the commission has authority to prevent the entry of stock into an infected district within the State of Michigan by a quarantine proclamation properly posted. We do not think, however, that the commission has authority by a quarantine regulation to prohibit the shipment into this State from other states of the United States animals not infected with contagious or infectious diseases.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o

COUNTY ROAD LAW. A county having a valuation of \$6,030,000 has authority to bond to the extent of \$180,900 under the county road law.

March 3, 1911.

Mr. M. S. McDonough, Attorney at Law, Iron River, Michigan:

Dear Sir—We are in receipt of your letter of February 27th, in which you state:

"The county of Iron has an assessed valuation of six million and thirty thousand dollars. The board of supervisors desire to bond the county in the sum of \$150,000 for the purpose of improving, rebuilding and repairing the highways included within the county road system of said county. I have given my opinion to the board as to the right of the county to bond after the holding of an election authorizing the issue, but the opinion of the attorney general is desired."

In reply thereto will say that it is our view that after the passage of a resolution by the board of supervisors and the holding of an election authorizing the issue of bonds the county of Iron having adopted the county road system, would be authorized to bond the county to an amount not exceeding three per cent of \$6,030,000, which would amount to \$180,900. The authority to bond to this extent is conferred by Section 22 of Chapter 4 and Sections 15 to 18 of Chapter 14 of Act 283, Public Acts of 1909.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o

COAL MINES. ILLUMINATING OILS. Section 31 of Act 100 of the Public Acts of 1905, requires the inspection of illuminating oils used in coal mines in this State by the State Inspector of Oils.

March 3, 1911.

Mr. Frank S. Neal, State Inspector of Illuminating Oils, Northville, Michigan:

Dear Sir—We are in receipt of your letter of February 25th, inquiring whether Section 31 of Act 100 Public Acts of 1905 requires the illuminating oils used in mines to be inspected by yourself or one of

your deputy inspectors. The Section in question is part of "An act to provide for the protection of the health, lives and interests of the coal miners of Michigan and to provide for the inspection of all coal mines in this State." The section in question provides:

"An inspector of oil shall visit the mines at least four times a year to test all oils used for illuminating purposes in the mines of this State, and any person or persons, firm or corporation having in charge the operation or running of any mine which, in a mine under his or its charge, uses or permits the use of any oil other than that prescribed by the provisions of this act, and any miner or mine employe who uses any oil other than prescribed in this act, in any mine in this State, shall be fined not less than five nor more than twenty-five dollars."

It is clear that this section contemplates the official inspection of oils used for illuminating purposes in mines, the kind and quality of the oil being prescribed by Section 30 of the act. There is no other public official to whom the section could possibly refer except to the State Inspector of Illuminating Oils and it is our view that it is your duty to make the inspection provided for by this section.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

JUDGE OF PROBATE. FEES. For exemplified copy of license to mortgage furnished the executor, etc.

March 9, 1911.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Michigan:

Dear Sir—We are in receipt of your letter of February 28th. In reply to the inquiries therein contained, will say that under Section 9139, Compiled Laws, we think the Judge of Probate would be entitled to a fee for an exemplified copy of license to mortgage furnished the executor, etc., or guardian at their request. This holding is in accordance with the ruling laid down in our former opinion.

Replying to your inquiry relative to Sections 9470 and 9471, will say that the duty imposed upon the Judge of Probate is to enter the finding and adjudication on the journal of the court. No duty is imposed upon him to make a certified copy and if made at the request of the heirs or any of the interested parties, he would be entitled to make the usual charge therefor, in accordance with the ruling as laid down in our former opinion.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

VILLAGE OFFICE. CANDIDATE. Candidate for village office cannot have his name printed on more than one party ticket.

March 9, 1911.

Mr. Alfred G. Sandberg, Reed City, Michigan:

Dear Sir—I have your communication of March 4th, in which you ask whether a candidate for a village office can run on two separate party tickets. I assume your inquiry relates to his right to have his name printed upon two tickets.

In reply thereto would say it is assumed that such tickets are printed under authority of Section 3659 of the Compiled Laws of 1897, same being Section 229 of the pamphlet of election laws of 1909. This section provides that the board of election commissioners of a village shall perform such duties relative to the preparation and printing of ballots as are required of the boards of election commissioners of counties and like duties and privileges are enjoined.

It would seem from this provision that the provision of the general law would be applicable. Section 3621 of the Compiled Laws, being Section 148 of the pamphlet of election laws, of 1909, makes it unlawful for the county board of election commissioners to print in more than one column on the ballot the name of any candidate.

In view of the foregoing, it would seem that it would be unlawful for a candidate for a village office to have his name printed on more than one party ticket.

Very respectfully,
FRANZ O. KUHN,
Attorney General.

L-k-o.

SHERIFFS. Fees for conveying prisoners to the Detroit House of Correction where the prisoner is sentenced for not more than sixty days should be paid through the board of supervisors.

Fees for conveying prisoners convicted of offenses punishable by imprisonment in the State Prison and sentenced to the Detroit House of Correction should be paid by the State.

March 9, 1911.

Mr. G. W. LaChapelle, Supervisor, Harrisville, Michigan:

Dear Sir—We are in receipt of your letter of March 4th, in which you inquire:

“Should the sheriff’s fees be paid by the county or by the State for conveying prisoners to the Detroit House of Correction?”

In reply thereto your attention is called to Sections 2164 to 2166 of the Compiled Laws of 1897. Section 2164 provides for the payment of fees and compensation for conveying prisoners of the class specifically set forth in Section 2163, Compiled Laws, to-wit: “those not punishable by imprisonment in the State Prison and sentenced for more than sixty days,” through the board of supervisors of the county. Section 2166 provides for the payment of fees and compensation for conveying pris-

oners "convicted of any offense punishable by imprisonment in the State Prison," the same amount of fees and compensation allowed for conveying prisoners to the State Prison. This department has held that the fees and compensation provided by Section 2166 shall be paid by the State in the same manner as fees for the conveyance of prisoners to State Prisons.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-m-o.

CITY. INCORPORATION. In proposed consolidation question to be voted upon separately in the various portions of the district to be affected. This requirement unnecessary in proposed incorporation.

March 9, 1911.

Mr. Dwight H. Fitch, Prosecuting Attorney, East Jordan, Michigan:

Dear Sir—I have your communication of February 25th, relative to our opinion to you under date of February 23d, referring to the proposed incorporation of the city of East Jordan.

In reply thereto would say in our opinion to you under date of February 23d, we confused your inquiries as relating to a proposed consolidation or changing of boundaries rather than to a proposed incorporation. I understand the proviso referred to in Section 9 of Act 279 of the Public Acts of 1909, to refer only to a proposed consolidation or changing of boundaries. In such case it is necessary that the question be voted upon separately in the various portions of the district to be affected. This requirement, however, is not necessary in a proposed incorporation. Our former opinion should, therefore, be modified to the extent herein indicated.

The foregoing renders it necessary to answer the first inquiry set forth in your communication of February 18th. It appears that the territory was properly described in the petition to the board of supervisors, but that an error was made in describing the property in the resolution of the board of supervisors calling the election. It appears that in the resolution the only error referred to is that the word "east" should read "south." You ask whether this error would invalidate the election.

In reply to this inquiry would say that it is questionable whether this error would have any serious effect in view of the fact that the description was properly set forth in the petition. My attention has not been called to any case in which this proposition has been considered by the court. I am not prepared to say whether the election would cure the defect or how our supreme court would consider such a proposition. It occurs to me, however, that since the proposed action is of vital importance that it should, so far as possible, be relieved from any possible question. While it may delay matters, I am inclined to believe that the safer rule to follow would be to have the error corrected before the matter is submitted to the people.

Yours very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

CHIROPRACTIC. CORPORATIONS. A corporation cannot be organized under the provisions of Act 212 of the Public Acts of 1903, to teach the science of Chiropractice.

March 9, 1911.

Hon. Frederick C. Martindale, Secretary of State, Lansing, Michigan:

Dear Sir—We are in receipt of your letter of March 7th, in which you state that articles of association for the purpose of incorporating the American College of Chiropractice, under Act 232 of the Public Acts of 1903, have been offered for record in your office. The purposes stated are as follows:

“The teaching of the science of Chiropractice (or a method of manual manipulation of the spinal nerves) in person or by mail to such students as may apply or be enrolled by said college in study of chiropractice.”

You request the opinion of this department as to the right of colleges of this character to be incorporated under the statutes of this State, more particularly under Act 232 of the Public Acts of 1903.

In reply thereto will say that Section 36 of Act 232 provides that the act shall not include nor apply to any of the corporations provided for in certain enumerated statutes. The statutes thus enumerated include banking, insurance corporation, building and loan associations, institutions of learning, benevolent and charitable associations, ecclesiastical bodies and others, and particularly includes corporations provided for by Sections 8426 to 8464 of the Compiled Laws of 1897, providing for corporations carrying on institutions for the treatment of disease and for instruction therein and in hygiene.

No other conclusion can be drawn from the statement of purposes contained in the articles referred to in your letter than that the purpose of the corporation is to furnish instruction in the treatment of disease. In view of the provisions of Section 36 of Act 232, excluding such corporations from its provisions, it is our view that a corporation organized for the purposes stated cannot be incorporated under the provisions of Act 232 of the Public Acts of 1903. If incorporated for the purpose of furnishing instruction in the treatment of disease, it must be incorporated under the provisions of Act 108 of the Public Acts of 1893, Sections 8426 et seq., Compiled Laws of 1897. This act does not make a provision for a division of purposes and a corporation organizing thereunder would have authority to carry on the business of “Treatment of disease” as well as the furnishing of “instruction therein.” A corporation organizing under the provisions of this act would have no authority to treat disease under a system not recognized by the laws of this State, as was held by this department in a former opinion to you.

It is our opinion, therefore, that a corporation could not organize under Act 108 of the Public Acts of 1893 for the purpose of teaching a method of the treatment of disease such as is not recognized under the laws of this State, of such a nature as is stated in the proposed articles. This would not apply to corporations organizing for the purpose of furnishing treatment in osteopathy for the reason that osteopathic practice is recognized and legalized under the laws of this State.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

BANKERS AND BROKERS. The term "Roberts Bros., Brokers" used as a sign on the door and on stationery is in violation of Section 5275 C. L. 1897.

March 9, 1911.

Mr. C. F. Roberts, Attorney-At-Law, 347 Woodward Avenue, Detroit, Michigan.

Dear Sir—We are in receipt of your letter of March 4th, inquiring whether the term "Roberts Brothers, Brokers," used as a sign on the door and on stationery, violates Section 5275 of the Compiled Laws of 1897.

In reply thereto will say that it is our opinion that it does not. It is our view that the use of an advertisement "Bankers and Brokers" is prohibited by the above mentioned section, as tending to convey the impression that the place of business referred to is an organized bank.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

LEGISLATION. A statute attempting to authorize trespass on private property to reach lakes stocked by the State Fish Commission would be unconstitutional.

March 9, 1911.

Hon. Horace T. Barnaby, State Senator, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of February 22d, requesting an opinion as to the validity of legislation giving the right of ingress and egress over private property, to and from lakes stocked by the State Fish Commission.

In reply thereto will say that Act 121 of the Public Acts of 1891, Sections 75 and 76 of the 1909 pamphlet of Game and Fish Laws, provide as follows:

(75). "That in any of the navigable or meandered waters of this State where fish have been or hereafter may be propagated, planted or spread at the expense of the people of this State or the United States, the people shall have the right to catch fish with hook and line during such seasons and in such waters as are not otherwise prohibited by laws of this State."

(76). "No action at law shall be maintained against persons entering upon such waters for the purpose of such fishing, by the owner, lessee or persons having the right of possession of adjoining lands except for actual damage done. In any such action the defendant under a proper notice may dispute on the trial the plaintiff's right to either title or possession of the land claimed to be trespassed upon."

It seems to us that the State is without authority to grant further rights over private property than is given by these statutes. A statute authorizing trespass upon private property would be in fact depriving a person of his property without due process of law, and therefore, contrary to the constitution of this State.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o

ELECTION LAW. CANDIDATE FOR RE-ELECTION. A candidate for re-election cannot act upon election board.

March 9, 1911.

Mr. E. L. Ford, Litchfield, Michigan:

Dear Sir—I have your communication of March 6th, in which you ask whether a candidate for re-election can act upon the election board.

In reply thereto would say Section 3612 of the Compiled Laws of 1897, being Section 139 of the pamphlet of General Election Laws of 1909, prescribes who shall be inspectors of election and provides:

“That no person shall act as such inspector who is a candidate for any office to be elected by ballot at said election.”

In accordance with the foregoing a person who is a candidate for re-election cannot act on the election board.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-k-o

BANKING LAW. A savings bank has authority to issue new certificates of stock to take the place of those sold upon execution under the provisions of Sections 10335 to 10338 C. L.

March 10, 1911.

Hon. Edward H. Doyle, Commissioner of the Banking Department, Capitol, Lansing, Michigan:

Dear Sir—In your letter of February 25th you state that the Peoples Savings Bank of Belding, Michigan, recently sought to enforce its rights, under Section 6090 of the Compiled Laws of 1897, by a sale of shares of its own bank stock, which is at the present time held by Chicago parties as collateral to a loan made by them. This sale was made by the sheriff, by order of the court and stock bid in by the Peoples Savings Bank. The Chicago parties refused to surrender the stock in question and you inquire by what authority, under the statute, can the officers of the bank cancel the old outstanding issue and a new issue of stock be made, which when sold, will re-imburse the bank for the amount which they have already applied on the stockholders' obligation, as noted above.

Since receiving this communication, we have received a copy of the proceedings under which the Sheriff's sale, above referred to, was made. It appears that this sale was not made pursuant to the authority conferred by the general banking law, Section 6090, to which you refer in your letter, but was made pursuant to an agreement confessing judgment, which seems to be in compliance with Section 10299 of the Compiled Laws of 1897. The sale of stock was then made pursuant to authority conferred by Sections 10335 to 10338 of the Compiled Laws of 1897. Section 10338 provides:

“And the purchaser (at such execution sale) shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfer.”

It is clear from the above statutory provision that the Peoples Savings

Bank of Belding has authority to issue to itself new certificates to take the place of those sold upon the execution and pursuant to the authority conferred upon it by the general banking law would have authority to sell these shares so issued within the statutory period.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

SCHOOL DISTRICTS. Sections 38 and 39 of the school law pamphlet of 1909 govern the apportionment of property between school districts the boundaries of which are changed under act 86 Public Acts of 1909.

March 10, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—Your letter of recent date enclosing communication from Mr. George A. Morris of Onaway, Michigan, received. Mr. Morris states the following proposition and requests information thereon.

"By special act, ordered to take immediate effect, approved May 14, 1897, "Union School District of the Township of Forest" was organized consisting of Towns 33 and 34 N., R. 1 East, in Cheboygan county. Last year these townships were divided as to boundaries, township 33 becoming Maple Grove township, and 34 retaining the name of Forest. The boundaries of the school district were changed according to the provisions of Act No. 86 of the Public Acts of 1909, at or about the same time of the division of the townships, the district of Forest taking the territory included within the boundaries of that township, and the same with Maple Grove, but no division of the property has ever been made. At this time they of both townships desire to make a division of the property. They are in dispute as to how that should be done,—one claiming that the school boards of each township district should, in joint session, make the apportionment; and the other that the township boards are the proper authorities. I may say also that the new township elected school officers, who have qualified, and school is being maintained."

In reply would say that it is our view that Sections 38 and 39 of the pamphlet edition of General School Laws, Revision of 1909, governs the above statement of facts. Sections 38 and 39 read as follows:

38. "When a new district is formed in whole or in part from one or more districts possessed of a schoolhouse or entitled to other property, the township board at the time of forming such new district, or as soon thereafter as may be, shall ascertain and determine the amount justly due to such new district from any district out of which it may have been in whole or in part formed, as the proportion of such new district, of the value of the schoolhouse and other property belonging to the former district, at the time of such division; and whenever by the division of any district, the schoolhouse or site thereof shall no longer be conveniently located for school purposes and shall not be desired for use by the new district in which it may be situated, the township board of the township in which such schoolhouse and site shall be located may adver-

tise and sell the same, and apportion the proceeds of such sale and also any moneys belonging to the district thus divided among the several districts erected in whole or in part from the divided district."

39. "Such proportion shall be ascertained and determined according to the value of the taxable property of the respective parts of such former district at the time of the division, by the best evidence in the power of the township board; and such amount of any debt due from the former district, which would have been a charge upon the new had it remained in the former district, shall be deducted from such proportion: Provided, That no real estate thus set off, and which shall not have been taxed for the purchase or building of such schoolhouse, shall be entitled to any portion thereof nor be taken into account in such division of district property."

Therefore, in the apportionment of the property of the former school district between the two districts into which it was divided, we believe the township board is the proper body to act according to the provisions of law above quoted.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o

SCHOOL LAW. We are of opinion in view of the above that schoolhouses and school apparatus must be taken into consideration when a division of the property of one school district is made between two or more districts which have been formed from said former district.

March 10, 1911.

Mr. W. L. Coffey, Attorney-at-law, Tower, Michigan:

Dear Sir—Your letter of recent date received. Therein you say:

"The school board and the township board wished me to write you and get your ruling on the following question: Towns 33 and 34 were one township until last spring when the supervisors divided them and called town 33, Maple Grove and town 34, Forest, the name that was applied to the two before division. These two townships were organized under special act as one school district. Last June at the close of the school year the district was divided, according to Act 86, P. A. 1909, to correspond with the boundaries of the two townships. There were then six school houses in Forest township and one in Maple Grove. Our special act only provides the machinery, otherwise we are governed by the general school laws.

"Question: Must those school houses and the school apparatus be estimated and taken into consideration when a division of the property is made between the two township school districts as pointed out by Sections 4657 and 4658 of the Compiled Laws of 1897?"

In answer will quote Section 38 of the pamphlet edition of the General School Laws, Revision of 1909, which provides:

"When a new district is formed in whole or in part from one or more districts possessed of a schoolhouse or entitled to other property, the township board at the time of forming such new district, or as soon thereafter as may be, shall ascertain and determine the amount justly due to

such new district from any district out of which it may have been in whole or in part formed, as the proportion of such new district, of the value of the schoolhouse and other property belonging to the former district, at the time of such division; and whenever by the division of any district, the schoolhouse or site thereof shall no longer be conveniently located for school purposes and shall not be desired for use by the new district in which such schoolhouse and site shall be located may advertise and sell the same, and apportion the proceeds of such sale and also any moneys belonging to the district thus divided among the several districts erected in whole or in part from the divided district."

We are of opinion in view of the above that schoolhouses and school apparatus must be taken into consideration when a division of the property of one school district is made between two or more districts which have been formed from said former district.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-k-o.

CONSTITUTIONAL LAW. LOCAL SCHOOL ACT. TOWNSHIP BOARD. Constitution prohibits passage of local act where general act can be made applicable. Township boards may be authorized by law to change the boundaries of school district the limits of which are prescribed by legislative act.

March 10, 1911.

Hon. Charles E. Cartier, State Senator, Capitol, Lansing:

Dear Sir—I have your communication of March 9th, enclosing a petition relative to the repealing of an act to consolidate certain school districts in Lake county.

In reply thereto would say the language of Section 30 of Article 5 of the Constitution prohibiting the passage of a local act or special act where a general act can be made applicable would prohibit the passage of an act to repeal the local act referred to in your communication. I believe this matter can be remedied through a bill conferring upon the township board or township boards in case of fractional districts authority to alter or change the boundaries of a school district the limits of which are prescribed by legislative act.

Your petition is herewith returned.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.

JUDGES OF PROBATE. A judge of probate is not entitled to receive extra compensation for services in condemnation proceedings.

March 10, 1911.

Hon. Theo. C. Hardies, Judge of Probate, Metz, Michigan:

Dear Sir—We are in receipt of your letter of March 3d, in which you inquire as to your right to additional compensation for sitting as judge in certain condemnation proceedings instituted by railroad companies.

In reply thereto would call your attention to Act 119 of the Public Acts of 1903, fixing the salaries of judges of probate, which act provides:

“Which salary shall be in full compensation for all services performed by them in connection with any estate or matter in their respective courts, and they shall make no charge to any person for any paper drawn or services performed by them or any person or clerk connected with their office except for copies of record or papers on file and certificates and exemplifications of records or papers in his office which shall be furnished for ten cents per folio and twenty-five cents for certifying, sealing and attesting the same.”

Under this provision you will see that you are not entitled to receive compensation for services in condemnation proceedings.

The railroad company has a right to institute these condemnation proceedings in your court if it so desires.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

PRIMARY ELECTION LAW. NON-PARTISAN ELECTION. Primary election law does not apply to non-partisan election.

March 14, 1911.

Mr. E. L. Osborne, Pontiac, Michigan:

Dear Sir—I have your communication of March 13th, in which you ask whether the general primary election law applies to the election of city commissioners on a non-partisan ballot provided for in the new charter of the city of Pontiac; and whether any provision of the general primary election act prohibits the printing and distribution of circulars to make public your convictions and position on public welfare questions.

In reply thereto would say if the general primary election act applies it would be unlawful for any candidate to print, circulate or distribute any hand-bill, poster or other advertising matter larger than 2¼ inches in width and four inches in length, except postal cards and letters. (See Section 48 of Act 281 of the Public Acts of 1909.)

However, I seriously question whether the provisions of the general primary election act are applicable. Chapter three of your charter relates to the registration of voters and the nomination and election of officers. Sections six to seventeen inclusive relate exclusively to the nomination of candidates. It is provided that the names of all condi-

dates for the office of Commissioner shall be printed upon one ballot, which is a non-partisan ballot, and the two candidates receiving the highest number of votes and no other, shall be placed upon the ballot as candidates for commissioner. In view of the fact that it is a non-partisan ballot, many of the provisions of the general primary election act could not apply. Furthermore, since it is a non-partisan ballot, the real necessity for the application of the general primary election act does not exist. I am unable to find that your charter has made the provisions of the general law applicable except in certain instances. There is no language used in the charter which indicates that the penal provisions of the general primary election law are in force under your charter.

The matter is not entirely free from doubt but from such examination of your charter as I have been able to make, I am inclined to believe that the provisions of the general primary election act, relative to the printing and distribution of circulars, would not apply in the case of candidates for Commissioner under your charter.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

CONSTITUTIONAL LAW. An act amending an earlier local act limiting the amount that may be raised for highway purposes in a particular county would be a local act upon a subject upon which a general law can be made applicable and would therefore be unconstitutional.

March 16, 1911.

Hon. John Leidlein, State Senator, Capitol, Lansing:

Dear Sir—In reply to the question submitted by you as to whether or not the legislature may pass an act amending a local act of the legislature of 1899, limiting the amount that may be raised for highway purposes in Saginaw county to two dollars per thousand, I would say that under the Revised Constitution the legislature is prohibited from passing a local act in any case where a general law can be made applicable. I believe that this provision of the constitution would prohibit the legislature from passing an act amending a local act such as the one to which you refer. It seems to me there can be no question but that a general law applying to all counties of the State raising the limit from two to three dollars per thousand could be enacted and that consequently an act amending the local law would be prohibited. In this connection your attention is called to Section 12 of Article VIII of the revised constitution, which provides as follows:

"No county shall incur any indebtedness which shall increase its total debt beyond three per cent of its assessed valuation."

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

CONSTITUTIONAL LAW. A special act authorizing the Board of State Auditors to investigate into the merits of a claim for damages of one injured while in the service of the State and to award damages therefor would be a special act upon a subject upon which a general law could be made applicable and would be unconstitutional.

STATE, liability of. The State is not liable to a person who while employed at the Michigan Employment Institution for the Blind is injured through the negligence of officers or agents of the State.

March 16, 1911.

Mr. Julius B. Kirby, Attorney at Law, Saginaw, Michigan:

Dear Sir—I am in receipt of your letter of March 3d, with reference to the case of George Harriott who was injured while employed at the Michigan Employment Institution for the Blind at Saginaw.

In reply would say that this department has always held that there was no liability upon the part of the State for the negligence of its officers or agents. It has also been our view that where the statute permits suits to be brought against the board of trustees of any state institution this does not authorize suits for the torts of an officer or agent. The question of whether or not this board may be sued in an action of tort is now before the court in Saginaw county in a case where the board of trustees was sued in trover. The State has filed a demurrer to the declaration and directly raised the question of whether or not the authority to sue includes actions sounding in tort.

I do not know that there is any way that Mr. Harriott may be afforded any relief. Formerly it was quite common for the legislature to pass a joint resolution authorizing the board of state auditors to investigate into the merits of claims of this character and to award a sum of money within a limit fixed by the resolution. I think, however, that under the Revised Constitution a special act of this character would not be constitutional and the only way that the subject could be covered would be by a general law authorizing the board of state auditors to investigate all cases of this character.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-k-o.

STATE BOARD OF BAR EXAMINERS. The State Board of Bar Examiners are not required to return the application fee of a person who failed to pass the preliminary examination.

March 16, 1911.

Mr. I. C. Wheeler, Jr., Manton, Michigan:

Dear Sir—We are in receipt of your letter of March 3d, relative to the return of the ten dollar fee paid by you to the treasurer of the State Board of Bar Examiners and which you claim should be returned to you for the reason that you were rejected on your preliminary examination.

An examination of the statutes creating the State Board of Bar Ex-

aminers. Section 1119 et seq. of the Compiled Laws of 1897, shows that the examination given is for the purpose of "examining all applicants for admission to the bar as to their legal learning and general qualifications to practice." You will see from this that the preliminary examination given by the board is as much a part of the examination of the applicant as is the part of the examination relating to his legal qualifications. Having accompanied your application with the fee of \$10.00, your only right under the statute is to make an additional application after six months without paying an additional fee. This you state you do not desire to do. In view of the fact that you took a part of the examination, to-wit; the preliminary examination, it is our view that you are not entitled to the return of the \$10.00 fee.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CIRCUIT JUDGE. CANDIDATES FOR OFFICE. AUTHORITY OF BOARD OF ELECTION COMMISSIONERS IN PRINTING BALLOTS. Where there are more than two candidates for the office of circuit judge the position of names upon ballot to be determined by the board of election commissioners.

Right of board of election commissioners to rotate names discussed.

March 16, 1911.

Hon. A. M. Cummins, Attorney-at-Law, Lansing, Michigan:

Dear Sir—Your oral request submitted to Mr. Lawler for an opinion relative to the printing of the names of candidates for the office of circuit judge in Ingham county has been carefully considered. It is my understanding that there are two republican candidates and two democratic candidates for the office. That the four candidates have agreed to request the board of election commissioners to have the official ballots printed in such manner that the position of the names thereon will be different on every four ballots. The only question presented is the authority of the board of election commissioners to rotate the names to bring about this result.

It is the duty of the board of election commissioners to cause the names of all candidates for office to be printed on one ballot under the title and device of the proper party. Whereas in the present case there are two or more candidates for the same office the position of the names upon the ballot is a question to be determined by the board. When the board has determined this question it has performed its statutory duty. However, my attention has not been challenged to any provision in the law which would prohibit the board from authorizing the printing of the ballots in such manner that every fourth ballot would present a different combination of names. I may also say that there is nothing in the law which expressly authorizes such action. Furthermore, if the printing of the ballots in the manner suggested could be said to be an irregularity, the election would probably cure any defect. The foregoing are the only matters suggested to me at the present time relative to the authority of the board of election commissioners to take the action

in question. I am inclined to believe that since there is nothing in the law to prohibit such action and that the printing of the ballots in the manner suggested would clearly be a fair and just arrangement, that if the board of election commissioners desires to take this action, no one can complain.

There is another question incidently raised by your inquiry which bears upon the question of the additional expense of printing and preparing the ballots in the manner you suggest. The rotation of the names will necessarily create an expense in addition to that necessarily incurred in the printing of ballots in the ordinary manner. However, I do not express any opinion upon this question.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

BOARD OF ELECTION COMMISSIONERS. SECULAR DAYS. All days should be counted in determining whether the names of candidates are submitted not less than five days before the election.

March 15, 1911.

Mr. F. C. Peruert, St. Louis, Michigan :

Dear Sir—I have your communication of March 14th referring to Section 3660 of the Compiled Laws of 1897, which provides that:

“The names of candidates shall be given by the committees of the various political organizations to the board of election commissioners of such municipality not less than five days before each election,” etc.

You ask whether this means five clear secular days.

In reply thereto would say the same section of the statute to which you refer provides that:

“The proof copy of the ballot shall be open to the inspection of the chairman of each committee at the office of the township clerk, and city or village clerk or recorder, not less than two clear secular days before such election.”

In view of the fact that secular days only should be counted in one case and no reference thereto being made in the other, I am inclined to the opinion that all days should be counted in determining whether the names of the candidates are submitted not less than five days before the election.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

EXTRADITION. The Governor may in his discretion demand the return to this State of a fugitive from justice charged with a misdemeanor, but it has not been customary for the Governor to make the demand where the offense is a misdemeanor only.

March 16, 1911.

Mr. Asa K. Hayden, Prosecuting Attorney, Cassopolis, Michigan:

Dear Sir—I am in receipt of your letter of March 11th wherein you ask whether or not the Governor of this State would demand of the Governor of another State, the return of a person charged with a misdemeanor.

For answer thereto would say that while there is no law that would prevent the Governor of this State from demanding of the Governor of another State the return of a fugitive from justice charged with a misdemeanor, it has not been customary for the Governor to make the demand where the offense was a misdemeanor only. The custom has uniformly prevailed of refusing to make the demand when the offense charged is a misdemeanor.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

OFFICERS. ELECTORS. VILLAGES. TOWNSHIPS. Persons not citizens who have taken out their first papers six months prior to November 8, 1894, are entitled to vote. A person who is an elector is entitled to hold a village office. A person who is not a citizen is ineligible to a township office.

March 16, 1911.

Mr. Owen Garrett, Lott, Alcona Co., Michigan:

Dear Sir—Your letter of the 6th instant received. Therein you inquire if it is lawful for persons to vote and hold office who have only their first citizenship papers.

In reply will refer you to Section 1 of Article III of the Revised Constitution, which reads, in part:

“In all elections, every male inhabitant of this state, being a citizen of the United States; every male inhabitant residing in this state on the twenty-fourth day of June, eighteen hundred thirty-five; every male inhabitant residing in this state on the first day of January, eighteen hundred fifty; every male inhabitant of foreign birth, who, having resided in the state two years and six months prior to the eighth day of November, eighteen hundred ninety-four, and having declared his intention to become a citizen of the United States two years and six months prior to said last named day; and every civilized male inhabitant of Indian descent, a native of the United States and not a member of any tribe, shall be an elector and entitled to vote; but no one shall be an elector or entitled to vote at any election unless he shall be above the age of twenty-one years, and has resided in this state six months and in the township or ward in which he offers to vote twenty days next preceding such election.”

Therefore any person who has resided in this State two years and six months prior to the eighth day of November, 1894, and has declared his intention to become a citizen of the United States two years and six months prior to said last named date, and who possesses the other necessary qualifications, is an elector and entitled to vote. There are different provisions, however, respecting the eligibility of such persons to hold office. For instance, under Section 2705, Compiled Laws of 1897, which reads in part:

"No person shall be elected or appointed to any office unless he shall be an elector of the village,"

an elector may be a village officer although he may not be a full citizen of the United States. But under Section 2382, C. L. 1897, which reads, in part:

"No person except a citizen of the United States and an elector as aforesaid shall be eligible to any elective office contemplated in this chapter,"

an elector is ineligible to hold a township office unless he be also a citizen of the United States.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-O

BOARD OF SUPERVISORS. RIGHT OF TO CALL SPECIAL ELECTION: Questionable whether April election is a general election within the meaning of Section 18 of Chapter 14 of Act 283 of the Public Acts of 1909.

March 21, 1911.

Mr. M. S. McDonough, Attorney-At-Law, Iron River, Michigan:

Dear Sir—I have your communication of March 15th, in which you refer to Section 18 of Chapter 14 of Act 283 of the Public Acts of 1909, and ask whether the general election therein referred to may be taken to mean the coming April election.

In reply thereto would say the section in question provides that if a general election be held within six months of the filing of the petition therein referred to, the question shall be submitted at such election, but if not, a special election may be called by the board of supervisors. I doubt whether the coming April election would be a general election within the terms of this statute. The question, however, can be relieved from all doubt if the board of supervisors calls a special election. This in my judgment is the safer course to pursue.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

SCHOOL DISTRICT. TUITION. HIGH SCHOOLS OF OTHER STATE. A school district has no right to pay the tuition of a child to a high school in another state.

March 21, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I have your communication of March 16th, relative to the right of any school district in Michigan to pay the tuition of any child to a high school in Indiana.

In reply thereto would say the law relating to the payment of tuition of children who have completed the eight grades in any school district authorizes payment of tuition to one of the three nearest high schools. The language of the statute clearly contemplates that the high schools to which such tuition is paid shall be high schools of Michigan and not any high school outside of the State.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-O.

STATE VETERINARIAN. VACANCIES. Where the term of office of the State Veterinarian has expired and a successor has not been appointed, the officer whose term has expired holds until the appointment of a successor.

March 21, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—Relative to your inquiry as to whether a vacancy exists in the office of State Veterinarian, we understand that one Norris was appointed in 1907, to hold for two years pursuant to the statute. The statute conferring on the Governor the power to appoint a State Veterinarian is Section 5627 of the Compiled Laws of 1897, which reads in part:

“The governor shall also appoint with the advice and consent of the senate a competent and skilled veterinary surgeon for the state who, at the time of such appointment shall be a graduate in good standing of a recognized college of veterinary surgery and who shall hold his office two years from the second Tuesday of July of the year he is appointed and until his successor is appointed and qualified. The governor shall also appoint every two years thereafter a competent and skilled veterinarian having the qualifications above mentioned, whose term of office shall be for two years or until his successor is appointed and qualified.”

If no successor has ever been appointed to Mr. Norris, it is our view from a consideration of the foregoing that said Norris holds the office of State Veterinarian and will continue so to hold until such time as a successor shall be appointed to replace him.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

Mck-O

LOCAL OPTION LAW. The sentence imposed upon a person convicted a second time of violating the local option law should be an indeterminate sentence for the minimum term of six months and the maximum term of two years. Such an offense is not a felony so as to entitle defendants joined in one information to separate trials if demanded.

March 22, 1911.

Hon. James A. Parkinson, Circuit Judge, Jackson, Michigan:

Dear Sir—I am in receipt of your letter of March 16th, with reference to the sentence to be imposed upon conviction for the second time of violating the local option law. You ask my views as to whether or not the sentence should be an indeterminate sentence and whether or not the offense is a felony so as to entitle defendants joined in one information to separate trials if demanded.

As to whether the sentence should be an indeterminate sentence would say that it is my opinion that the sentence should be an indeterminate one under Act 184 of the Public Acts of 1905. That act provides in part:

“That when any person shall hereafter be convicted of crime committed after this act takes effect, the punishment for which prescribed by law may be imprisonment in the State Prison at Jackson, the Michigan Reformatory at Ionia, the State House of Correction and Branch of the State Prison in the Upper Peninsula or the Detroit House of Correction, the courts imposing sentence shall not fix a definite term of imprisonment, but shall fix a minimum term of imprisonment which shall not be less than six months in any case.”

Section 16 of the local option law provides that the punishment for the second and every subsequent offense thereunder shall be “a fine of not less than one hundred dollars nor more than five hundred dollars and imprisonment in the State House of Correction and Reformatory at Ionia for a term of not less than six months nor more than two years, in the discretion of the Court.” The name of the institution referred to in this statute as the “State House of Correction and Reformatory at Ionia” was changed to the “Michigan Reformatory” in 1901, Act 75 of the Public Acts of 1901.

Under these provisions of the statute it seems clear to me that the sentence upon conviction for violating the local option law a second time would be an indeterminate sentence to the Michigan Reformatory under the provisions of the indeterminate sentence act. I think that the word “crime” as used in the indeterminate sentence act and as used in the constitutional provision relating to the indeterminate sentence was intended to include both felonies and misdemeanors. I do not think the question is affected by the change of the name of the institution from State House of Correction and Reformatory to the Michigan Reformatory. I presume that the legislature in amending this section of the statute simply adopted a part of the old section which referred to the institution as the State House of Correction and Reformatory at Ionia.

As to the second question asked would say that I do not think the offense is a felony under the statute to which you refer. A felony under our law includes such offenses as are punishable by imprisonment in the

State Prison. The Michigan Reformatory is not a state prison, its identity as a house of correction being preserved in the general prison act, Section 2080 of the Compiled Laws of 1897.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-m-o.

CONSTITUTIONAL LAW. HIGHWAY COMMISSIONER. The Legislature cannot deprive the Highway Commissioner who is a constitutional officer, of all control and supervision over township highways.

March 22, 1911.

Hon. James A. Murtha, Senate Chamber, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of March 8th, enclosing copy of Senate Bill 188, file 176, which you submit for an opinion as to its constitutionality. The question raised is whether it takes the control of the highways coming within its provisions from the highway commissioner to such an extent as to render it unconstitutional.

Without citing the cases, it is our view that the constitution contemplated that the highway commissioner where the township highway system prevails, should have some measure of control and supervision over the highways of the district. As we read the bill submitted, it purports to take away such duties as the highway commissioner has heretofore exercised in this regard and confer these duties upon the board of good roads commissioners, provided for in the proposed enactment. While it is undoubtedly true that some of the duties of the highway commissioner, which have heretofore been imposed upon him by law, may be taken away from him by statute, we entertain grave doubts as to the power of the legislature to deprive him of all control and supervision over township highways. Whether this bill deprives the township highway commissioner of authority over the highways to an extent which the Courts would hold unconstitutional, we are unable definitely to say. To us it seems to come dangerously near the line.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

TAXES ASSESSED FOR SCHOOL PURPOSES. Collecting officer is only required to account to the school district for such portion of the school taxes assessed as are collected.

March 22, 1911.

Mr. E. D. Holmes, R. F. D. No. 3, Ypsilanti, Michigan:

Dear Sir—Your letter of the 17th instant received and contents noted. It appears from your letter that school district No. 4, being a fractional school district, is located partially in the township of Ypsilanti and also in the city of Ypsilanti; that the city treasurer of Ypsilanti accounted to said school district for all of the school taxes appearing upon the assessment roll; that the city treasurer has been unable to secure

a settlement on that basis with the common council of the city of Ypsilanti and bill has been rendered to said school district for \$109.41 for school taxes which were not collected, but which were paid to said district.

I have given careful consideration to the question as to whether or not it was the duty of the city treasurer to account to the school district the full amount of school taxes assessed without any regard to their collection. Section 4711 of the Compiled Laws of 1897, being Compiler's Section 85 of the 1909 edition of the School Laws provides, in part, as follows:

"The township treasurer shall retain in his hands out of the moneys collected by him, after deducting the amount of tax for township expenses, the full amount of the school taxes on the assessment roll and hold the same subject to the warrant of the proper district officer, to the order of the school inspector, or of the persons entitled thereto, etc.

This section standing by itself would seem to indicate that the township treasurer or the city treasurer, as the case might be, should account to the district for the full amount of school taxes assessed. However, Section 4674 of the Compiled Laws, as amended by Act 83 of the Public Acts of 1903, reads in part as follows:

"All taxes voted for teacher's wages, incidentals and deficiencies, and services of officers when collected and received, shall be accounted for under the title of the general fund."

I also quote from the latter part of said Section, as follows:

"When any tax has been estimated by the district board or by the district, under the provisions of law, and the money is needed before it can be collected, the district board may borrow on the strength of such tax a sum not exceeding the total of such tax."

Section 7 of Chapter 14 of Act 283 of the Public Acts of 1909, which chapter relates to highway taxes and the assessment thereof, reads as follows:

"In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him, to be paid out for the following purposes: the amount of school taxes collected to be paid on the order of the school district officer, the amount collected for general township purposes to be paid on the order of the township board, the amount collected for highway purposes to be paid on the order of the commissioner of highways, countersigned by the township clerk or supervisor, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund."

I also call your attention to Section 52 of the General Tax Law, which reads as follows:

"In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him, to be paid out for the following purposes: the amount of school taxes collected to be paid on the order of the school district officer, the amount collected for general township purposes to be paid on the order of the township board, the amount collected for highway purposes to be paid

on the order of the commissioner of highways, countersigned by the township clerk or supervisor, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund."

I do not find that the Supreme Court has passed squarely upon the question involved, but taking into consideration the language of Section 52 of the General Tax Law and the other provisions of the statute, to which I have directed your attention, it is my opinion that the collecting officer is only required to account to the school district for such portion of the school taxes assessed as are collected by that official.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

M-m-o.

INCOMPATIBILITY. JUSTICE OF THE PEACE AND SCHOOL DIRECTOR. The offices of justice of the peace and school director are incompatible.

March 22, 1911.

Mr. Charles Eady, Grant, Michigan:

Dear Sir—Your letter of recent date received. Therein you inquire if you can lawfully hold the offices of justices of the peace and school director at the same time.

In answer will call your attention to Section 8 of Chapter 13 of Act No. 164 of the Public Acts of 1881, as amended by Act 32 of the Public Acts of 1909, which reads, in part:

"The township board of each township containing primary school districts and in the case of fractional school districts the township board of the township in which the district schoolhouse thereof is situated, shall have power and is hereby required to remove from office, upon satisfactory proof, after at least five days' notice to the party implicated, any district officer who shall have illegally used or disposed of any of the public moneys entrusted to his charge, or who shall persistently and without sufficient cause refuse or neglect to discharge any of the duties of his office: Provided, That the power of the township board to remove school officers from office shall not apply when the township is organized as a school district."

Thus in certain cases, and with one exception, the township board has the power to remove school district officers in primary school districts. Since the two justices whose term of office soonest expire are members of the township board and since the school director is a school district officer, we believe the provisions of the section above quoted clearly establish incompatibility between the offices and consequently your acceptance of the second office the duties of which are inconsistent with those of the first, vacates the first office as a matter of law.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

M-c-k-o.

TOWNSHIPS. ANNUAL REPORT. Section 2350 Compiled Laws of 1897, does not require the publication of the township clerk's annual report in a newspaper.

March 22, 1911.

Mr. H. F. Harris, Publr., Richmond, Michigan:

Dear Sir—Your letter of recent date received. Therein you inquire whether Section 2350 of the Compiled Laws contemplates the publication of township clerks' annual reports in a newspaper or whether such publication shall consist exclusively of printed or written pamphlet reports. You say the section referred to is ambiguous in its terms inasmuch as the word "publish" as used in said act is everywhere else in the statutes used to specify a newspaper publication.

Section 2350 of the Compiled Laws reads:

"That the township boards of the several townships of this State shall make and cause to be published annually, immediately upon the settlement of the township board, an itemized statement of first, the amount of money in the hands of the township treasurer at the beginning of the fiscal year, specifying the amount in the several funds; second, the amount and source of all money placed to the credit of the township and the fund to which the same has been accredited; third, all bills audited and allowed by them; fourth, all disbursements of money made by them, and for what purpose and from what fund the same has been paid; fifth, all outstanding unpaid claims and to what fund the same are charged; sixth, the balance of money remaining to the credit of the township, specifying the amount in the several funds. The said itemized statement shall be written or printed and distributed in numbers of not less than five nor to exceed fifty copies and also post three copies of said statement in conspicuous places, said distribution and posting to be made at the polls of every annual township meeting, at the commencement of the opening of the polls."

It is our view after considering the foregoing that the word "publish" as used therein does not refer to publication in a newspaper, but merely a publication by printed or written leaflet.

The word "publish" is used in the statutes in a variety of meanings. Its exact meaning in each instance must be gathered from the context and the purpose to be accomplished, viewed in the light of established usage and custom. Relative to the publication of reports we find that the laws specifically provide that the reports of banks to the banking commissioner shall be published *in some newspaper*, the reports of investment companies shall be published *in some newspaper*, the reports of county treasurers relative to liquor taxes shall be published *in some newspaper*, etc.

Therefore since in the case which you present no reference is made to publication in newspapers, we believe that it was the intent of those framing the law, that such publication should not be in newspapers but only in printed or written leaflet form.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

HIGHWAYS. HIGHWAY COMMISSIONER. TOWNSHIP BOARD.

The highway commissioner has no vote upon the township board on the question of expending the highway improvement fund.

March 21, 1911.

Hon. Townsend A. Ely, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Your letter of the 17th instant received. Therein you state: "In sections 8 and 9 of Chapter 2, Act 283, Laws of 1909, the following phrases are used: 'the highway commissioner and township board' and 'the highway commissioner acting with the township board.' In your opinion would this statute make the township highway commissioner a member of the township board and entitle him to a vote on certain road matters?"

You further say:

"In section 10, the law states: 'the highway improvement fund shall be expended by the township highway commissioner, under the direction of the township board.' Would the highway commissioner be entitled to a vote upon the expenditure of this fund?"

Replying to your first question will say that the township board consists of four members, the supervisor, the two justices of the peace whose term of office will soonest expire, and the township clerk, Section 2343, Compiled Laws of 1897. The township highway commissioner is in no case a member of the township board and consequently is not entitled to vote on any matters coming before said board for its consideration. We believe this answers your second question.

The language of Section 10 of Chapter 2 of Act 283, Public Acts of 1909 above quoted simply means that said highway improvement fund shall be disbursed and expended by the township highway commissioner, but that in the expenditure of said fund, said commissioner shall be guided and directed by the township board in all matters pertaining thereto.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

INCOMPATIBILITY. JUDGE OF PROBATE AND TOWNSHIP TREASURER. Offices of judge of probate and township treasurer are incompatible.

March 22, 1911.

Mr. B. J. Watters, County Commissioner of Schools, Lewiston, Montmorency Co., Michigan:

Dear Sir—Your letter of recent date received. Therein you ask whether one man can lawfully hold the offices of judge of probate and township treasurer at the same time.

In reply will call your attention to Sections 1159 and 1160 of the Compiled Laws of 1897, which read:

"The Governor may remove all county officers chosen by the electors of any county or appointed by him, and shall also remove all justices of the peace and township officers chosen by the electors of any township, or city or village officers chosen by the electors of any city or village, when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer is incompetent to execute properly the duties of his office, or has been guilty of official misconduct, or of wilful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this State that such officer after his election or appointment shall have been convicted of a felony; but the governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true, with a statement of the prosecuting attorney of the county, that in his opinion the case demands investigation. But no such officer shall be removed for such misconduct or neglect unless charges thereof shall have been exhibited to the governor, as above provided, and a copy of the same served on such officer, and an opportunity given him of being heard in his defense."

The Governor may direct the Attorney General, or the prosecuting attorney of the county in which such officer may be, unless such prosecuting attorney be the officer charged, to conduct an inquiry into the charges made, and the said attorney general or such prosecuting attorney shall thereupon give at least eight days' notice to the officer accused, of the time and place at which he will proceed to the examination of witnesses in relation to such charges, before some circuit court commissioner, or judge of probate, for the same county, and he shall also, at the time of giving such notice, serve on the officer accused a copy of such charges."

You will perceive from a consideration of the foregoing that there is a possibility of conflict between the duties of the two offices to which you refer and although remote, we believe such possibility raises the barrier of incompatibility between the offices. By accepting the second office, the duties of which are inconsistent with those of the first, a person vacates the first as a matter of law.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

LEGISLATURE. LOCAL ACT. Legislature has no right to pass a local act where a general act can be made applicable.

March 22, 1911.

Hon. Eugene Foster, State Senator, Capitol, Lansing:

Dear Sir—I have before me the communication of Herman Dehnke of Mud Lake, Michigan, under date of March 15th, directed to yourself. This communication suggests the inquiry whether a law could be passed providing for the division of a particular township in Alcona county.

In reply thereto would say your attention is directed to the provisions

of Section 30 of Article V of the Constitution which provides, in part, that

"The legislature shall pass no local or special act in any case where a general act can be made applicable." etc.

It is my opinion that such a bill as is referred to in the communication would be a special or local bill and since it is believed that a general act can be made applicable, it would be prohibited by the Constitution.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

AMENDMENTS TO CONSTITUTION. BALLOT. VOTING MACHINES. If it is impossible to vote an amendment to the constitution upon a voting machine, ballots can be prepared and furnished to the elector and a separate ballot box provided for the reception of same.

March 23, 1911.

Mr. Wm. F. Jahnke, City Clerk, Saginaw, Michigan:

Dear Sir—I have your telegram under date of March 22d, in which you ask whether amendments to the Constitution can be voted by a ballot box where voting machines are used for the rest of the questions, and also whether the amendment can be abbreviated to be put on the card used in the voting machines.

In reply thereto would say Section 3 of Article XVII of the Constitution prescribes what shall be contained on the ballot in case of an amendment to the Constitution. You have undoubtedly received the form of ballot forwarded to you by the Secretary of State which I have approved. I am inclined to believe that this form should be followed. I find nothing in the laws relating to voting machines that would authorize the placing of a proposed amendment upon a card in an abbreviated form. If it is impossible to vote the amendment upon the machine, undoubtedly ballots can be prepared to be furnished to the elector and a separate ballot box provided for the reception of same.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-O

VILLAGES. The village council which refuses to allow publication of the annual statement may be compelled to do so by mandamus. Members of the council are also liable to prosecution for misdemeanor.

March 24, 1911.

Mr. F. E. Rice, Editor, Mesick, Michigan:

Dear Sir—Your letter of the 20th instant received. Therein you request information as to what action should be taken against a village council which refuses to allow the publication of the annual statement of an incorporated village.

Will say in reply that Section 2858 Compiled Laws of 1897 contains a

statement of the law relative to the publication of the annual statement of the receipts and expenditures of incorporated villages. Section 2858 reads:

"Within two weeks next preceding any annual village election, the council shall audit and settle the accounts of the treasurer and other officers of the village, and so far as practicable, of all persons having claims against the village, and shall make out a statement in detail of the receipts and expenditures of the corporation during the preceding year, which statement shall distinctly show the amount of all taxes raised during the year for all purposes and the amount raised for each fund; the amount levied by special assessment, and the amount collected on each; also the items and amounts received from all other sources during the year, also the several items of all expenditures made during the year, and the objects thereof, classifying the same for each purpose separately, and containing such other information as shall be necessary to a full understanding of the financial concerns of the village. Said statement, signed by the president and clerk, shall be filed in the office of the clerk, and a copy thereof published in a newspaper of the village at least seven days previous to the next annual village election, if one is published therein."

Thus it is the duty of the village council to publish in a newspaper of the village at least seven days previous to the next annual village election, if a newspaper is published therein, a copy of the statement which the law requires to be filed with the village clerk.

Section 11329 of the Compiled Laws of 1897 reads as follows:

"When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor."

In the case of *Ayres v. State Auditors*, 42 Mich. 428, Judge Campbell says:

"The fact that for a wilful omission of a statutory duty a public officer may be held for a misdemeanor (Comp. L., 7677) does not preclude the specific remedy of mandamus. *Rex v. Severn & Wyo. Railway Co.*, 2 Barn & Ald., 646. A criminal prosecution will not secure the performance of the duty, which is the main purpose of the law, and which cannot properly be left to the option of any one. The only way to enforce specific compliance with the statute is by mandamus."

There would appear to be, therefore, two methods by which you might proceed against the village council, namely, by criminal prosecution as for a misdemeanor or by mandamus to enforce specific compliance with the statute.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-O

ARTICLES OF PARTNERSHIP ASSOCIATIONS. PENALTY. Articles of partnership associations may be filed after January 1st, 1904, but after that date officers and managers are subject to a penalty.

March 29, 1911.

Hon. Frederick C. Martindale, Secretary of State, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of March 16th, in which you referred to the opinion of Attorney General John E. Bird, given under date of May 27, 1909, (1909 report, page 180) relative to filing of articles of partnership associations, limited. After carefully considering the provisions of Section 14 of Act 244, Public Acts of 1903, I am convinced that the section contemplates that the articles may be filed after January 1st, 1904, but that after that date the officers and managers should be subject to the penalty named in the section. Of course, if articles are offered for filing under this section it would be the duty of this Department to at once institute a suit against the officers and managers for the collection of the penalty which has already accrued.

We should be glad to have you report to us the names of any associations of which you have knowledge who have not complied with the provisions of Section 14 in order that proper proceedings may be instituted to oust them of their corporate franchise.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-O

VILLAGES. A village has a right to purchase land for a village park.

March 29, 1911.

Hon. James E. Sharp, Representative Hall, Capitol, Lansing:

Dear Sir—Your letter of the 24th instant received. Therein you ask if a village has the right to buy and control a piece of land outside of the village limits, to be used as a village park.

In reply will refer you to Section 22 of Article VIII of the revised constitution of 1908, which provides:

"Any city or village may acquire, own, establish and maintain either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety."

In view of the above, we are clearly of the opinion that your query should be answered in the affirmative.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-m-o.

CORPORATIONS. PREFERRED STOCK. Act 232, Public Acts of 1903, Articles of Association under Act 232, Public Acts of 1903, providing for an option to convert preferred stock at its maturity into common, par for par, are in violation of the act and not entitled to record.

March 29, 1911.

Hon. Frederick C. Martindale, Secretary of State, Lansing, Michigan:

Dear Sir—In your letter to this department under date of March 7th, you state:

"Articles of Association under Act 232 of 1903, have recently been offered for record in this office containing provision for both common and preferred stock, and it is provided in the articles that the holder of preferred stock shall have the right at maturity to convert the preferred stock into common stock, par for par, share and share alike."

You request an opinion as to your authority to receive and record such articles. Your letter was accompanied by a memorandum letter from Stevenson, Carpenter & Butzel, attorneys-at-law, Detroit, submitting their views upon the question and this department has been favored with a further letter discussing the same proposition. The discussion contained in the letters above referred to would be applicable to the question under consideration if it were not for the fact that our corporation law, Section 35 of Act 232 of the Public Acts of 1903, lays down specific requirements for the issuance of preferred stock.

In the case of the Lufkin Rule Co. vs. Secretary of State, 127 N. W. 784, Mr. Justice Blair in discussing the provisions of Act 232 relative to the issuance of common and preferred stock says:

"The provisions of the fourth subdivision of Section 2 and of Section 35 limit the corporation to the creation and issuance of 'certificates for two kinds of stock, viz., general or common stock and preferred stock,' etc. We don't think it was intended by the provisions of the ninth subdivision of Section two to authorize the corporation to create an essentially different class of stock than the classes specified or to authorize any material change in the character of the property rights evidenced by the certificate."

Section 35 lays down certain specific requirements for preferred stock. First, It shall not exceed two-thirds of the actual capital paid in; Second, It shall be subject to redemption at par at a certain time fixed by the by-laws and expressed in the certificates; Third, It shall be entitled to a fixed dividend; and Fourth, This dividend shall not exceed eight per cent per annum.

It is our view that the proposed provision relative to preferred stock is in direct contravention of the second and fourth requirements, above stated. In the event that the enterprise should prove a successful one and at the time of maturity of the preferred stock the common stock should be worth several times par, the preferred stockholders taking advantage of the circumstance might realize several times par for the preferred stock. In any event they would be able to exercise an option which the statute does not contemplate, namely, that of taking cash or common stock as seemed to their advantage.

We are of the opinion that any arrangement which purports to give

the preferred stock a value in addition to that represented by its two perquisites, namely, a cumulative dividend not to exceed eight per cent and redemption at par, is contrary to the letter and spirit of Section 35. It is our view that the articles of association providing for an option to convert preferred stock at its maturity into common stock, par for par, are in violation of the provisions of Act 232 and should not be accepted and recorded.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

VACANCIES. A vacancy in the office of member of the school board is filled pursuant to Section 49 of the school law pamphlet of 1909.

March 30, 1911.

Mr. Velma Entrekin, Justice of the Peace, Butman, Michigan :

Dear Sir—Your letter of the 23d instant received. Therein you refer to our communication, addressed to you under date of January 27th, 1911, holding the offices of supervisor and school director incompatible and that the acceptance of the office of supervisor vacates that of school director. You ask how the vacated office of school director can be filled; also if the business done by said school director after his election to the office of supervisor is legal.

In reply will say that the office of school director is a school district office. Section 49 of the pamphlet edition of the general school laws, revision of 1909, provides:

"In case any one of the district offices becomes vacant, the two remaining officers shall immediately fill such vacancy; or in case two of the offices become vacant, the remaining officer shall immediately call a special meeting of the district to fill such vacancies; in case any vacancy is not filled as herein provided within twenty days after it shall have occurred, or in case all the offices in a district shall become vacant, the township board of the township to which the annual reports of such district are made shall fill such vacancies. Any person elected or appointed to fill a vacancy in a district office shall hold such office until the next succeeding annual meeting, at which time the voters of the district shall fill such office for the unexpired portion of the term."

With reference to the official acts of a school director after his election to the office of supervisor, it is our opinion that they would be legal inasmuch as said school director remains a de facto officer until he vacates his office, and such vacation can be enforced only by a proper proceeding for that purpose.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

CITIZENSHIP. The son of an alien born in the United States is a citizen of the United States. If the son was not born in the United States he would be obliged to be naturalized in order to become a citizen or an elector.

March 30, 1911.

Francis M. Forman, M. D., 621 South Bridge Street, Belding, Michigan:

Dear Sir—Your letter of the 24th instant received. Therein you state substantially this proposition. On the 9th day of April, 1870, one James W. Curtis, made solemn declaration of intention to become a citizen of the United States. It seems he never took out his full papers. You wish to know if his son is a citizen of the United States and eligible to hold office without becoming naturalized.

We are unable to determine from your statement whether or not said son was born in the United States. Of course, if he were born in this country, he would be a native born citizen without any formality. Birth confers citizenship. However, if said son were not born in the United States, it is our opinion that he will have to be naturalized before he will be an elector or a citizen. We are enclosing you herewith copy of opinion of this department rendered to Mr. James E. Harkins, Ann Arbor, Michigan, under date of May 19, 1908, which we believe covers the point raised in your letter.

Respecting the eligibility of persons to hold office, there are varying provisions set forth in the statute. For instance, under Section 2705 of the Compiled Laws of 1897, which reads in part:

“No person shall be elected or appointed to any office unless he shall be an elector of the village.”

An elector may be a village officer although he may not be a full citizen of the United States. But under Section 2382 of the Compiled Laws of 1897, which reads in part:

“No person except a citizen of the United States and an elector, as aforesaid, shall be eligible to any elective office contemplated in this chapter.”

An elector is ineligible to hold a township office unless he be also a citizen of the United States.

We are returning to you herewith certified copy of declaration of intention of James W. Curtis.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

CITIZENSHIP. An alien who did not take out his papers until 1896 and has not taken out his second papers is not an elector.

March 30, 1911.

Mr. George A. Shinn, Township Clerk, Nirvana, Michigan:

Dear Sir—Your letter of the 24th instant received. Therein you say:

“Has a person who has only taken out his first naturalization papers, about fifteen years ago, a right to vote; and also can his boys have a

right to vote without taking out papers (boys being born in the United States.)”

In answer will direct your attention to Section 1 of Article III of the revised constitution of 1908, which reads in part:

“In all elections, every male inhabitant of this state, being a citizen of the United States; every male inhabitant residing in this state on the twenty-fourth day of June, eighteen hundred thirty-five; every male inhabitant residing in this state on the first day of January, eighteen hundred fifty; every male inhabitant of foreign birth who, having resided in the state two years and six months prior to the eighth day of November, eighteen hundred ninety-four, and having declared his intention to become a citizen of the United States two years and six months prior to said last named day; and every civilized male inhabitant of Indian descent, a native of the United States and not a member of any tribe, shall be an elector and entitled to vote; but no one shall be an elector or entitled to vote at any election unless he shall be above the age of twenty-one years, and has resided in this State six months and in the township or ward in which he offers to vote twenty days next preceding such election.”

The section explicitly says “every male inhabitant of foreign birth who, having resided in the State two years and six months prior to the 8th day of November, 1894, and having declared his intention to become a citizen of the United States two years and six months prior to the said last named day * * * shall be an elector and entitled to vote.” Therefore, if the person of whom you speak did not take out his first papers until 1896, plainly under the constitution he would not be entitled to vote unless he has since taken out full naturalization papers and complied with the other requirements of the section above quoted.

We are herewith enclosing copy of opinion rendered to Mr. Fred Wight, Boyne Falls, Michigan, under date of March 27, 1905, which covers the point raised by your second question.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

SCHOOL DISTRICTS. A local act creating a special township school district must be repealed before the district may re-organize under Act 117, Public Acts of 1909.

March 30, 1911.

Mr. Henry B. Freeman, Prosecuting Attorney, Munising, Michigan:

Dear Sir—Your letter of recent date received. Therein you say:

“The township of Munising was organized into a single school district by Act No. 209 of the Local Acts of 1891, found on page 14 of the Local Acts of 1891. We have been operating our schools under that old act up until the present time. Now we want to incorporate under Act No. 117 of the Public Acts of 1909. * * * * * The question now comes up, do we have to repeal by an act of the legislature, Local Act No. 209, as referred to, under which we are now operating, before we can organize under the new law? The new law provides that the qualified electors of any organized township residing outside of any

graded school district may vote, etc. We have, of course, a high school which is on the university list in Munising, but it is operated the same as our other schools in the township and by the same school board, which is provided for in the local act under which we are incorporated.

"I am of the opinion that it will not be necessary to go to the legislature to repeal our local act, but that by virtue of incorporating under the new law we change from the local act to the new law."

In reply will say that we are of the opinion that the local act under which you are organized will have to be repealed by act of the legislature before you can reorganize under Act No. 117 of the Public Acts of 1909.

You quote Section 1 of Act No. 117, Public Acts of 1909, and presumably base your conclusion thereon. Said section reads, in part, as follows:

"Whenever a majority of the qualified electors of any organized township residing outside of any graded school district votes in favor of organizing said township into a single school district, such township shall, after the second Monday in July thereafter, be a single school district and shall be governed by the provisions of this act."

We do not believe that said Section 1 supra contains any authorization for you to proceed to organize thereunder without first repealing the special act under which you were originally organized. Implied repeals find no favor in the law.

Relative to the question under discussion, we call your attention to the following Michigan decisions:

School District No. 13 v. Dean, et al., 17 Mich. 223;
Township of Harrison v. Board of Supervisors, of Schoolcraft County 117 Mich. 215.
City of Benton Harbor v. Cutler, 159 Mich. 364.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

JUVENILE COURT LAW. The county detention officer and not the sheriff is entitled to the custody of a child fifteen years of age charged with larceny under \$25.00.

March 30, 1911.

Mr. Clinton McGee, Assistant Prosecuting Attorney, Pontiac, Michigan:

Dear Sir—We are in receipt of your letter of March 25, in which you state:

"A youth of the age of fifteen years is arrested under the charge of larceny of goods under \$25.00. Is the county detention officer or sheriff entitled to the custody of the youth arrested?"

Your attention is directed to Section 8 of Act 6, Extra Session of 1907, which provides as follows:

"No child under seventeen years of age while under arrest, confinement, or conviction for any crime, shall be placed in any apartment or cell of any prison or place of confinement with any adult who shall be under arrest, confinement, or conviction of any crime, or be permitted

to remain in any court room during the trial of adults, or to be transported in any vehicle of transportation in company with adults charged with or convicted of crime: Provided, That this shall not be construed as repealing act number one hundred ten of the Public Acts of nineteen hundred one."

Also to the following provisions of Section 3 of the same act:

"It shall be the duty of the board of Supervisors in each county within ninety days after this act shall take effect, to provide and maintain at public expense, a detention room or house of detention or other suitable place, separate from the jail, lockup, police station or other place of confinement used for the incarceration of adult criminals charged with crimes or misdemeanors. Such detention place shall be properly located both for the convenience of the court work, and with a view to the healthful, physical and moral environment of all children within the provisions of this act, *who shall, when necessary, be detained in such place of detention so provided. Such place of detention shall be in charge of a matron or other person, capable and of good moral character.* Any child held in said place of detention shall have the right to give bond or other security for its appearance at the trial of such case, and the court may, in any such case appoint counsel to appear and defend, on behalf of any such child, who shall be paid out of the general fund of the county or city for such services, such sum as the court shall direct: Provided, That the prosecuting attorney shall appear for the people when ordered by the court."

It is clear therefore under the provisions of the statutes above quoted that if the child comes within the provisions of the juvenile court law he should be placed in the custody of the detention officer. Section 11,791 of the Compiled Laws of 1897, provides:

"The term felony when used in this title or any other statute shall be construed to mean an offense for which the offender on conviction shall be liable by law to be punished by death or by imprisonment in the State prison."

Applying this rule to the provision in section 2 of the juvenile court law that, "This act shall not prevent the trial by criminal procedure in the proper courts of children over fourteen years of age charged with the commission of a felony," it seems clear that under the State of facts in your letter the boy in question is not charged with a felony so as to take him out of the jurisdiction of the juvenile court. It is therefore our opinion that the boy should be turned over to the detention officer of the juvenile court and proper complaint lodged against him as a delinquent child.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

Hi-k-o.

INCOMPATIBILITY. MEMBER OF THE BOARD OF EDUCATION AND JUDGE OF PROBATE. The offices of judge of probate and member of board of education of a graded school district are incompatible.

March 30, 1911.

Mr. Dan Mace, Deputy City Clerk, Au Sable, Michigan:

Dear Sir—Your letter of recent date received. Therein you inquire whether a member of the board of education can also lawfully hold the office of judge of probate at the same time.

Assuming that you are organized as a graded school district under Chapter 10 of the General School Laws of 1909, it is our opinion that the two offices to which you refer are incompatible. Section 123 of the pamphlet of general school laws, revision of 1909, reads:

"No alterations shall be made in the boundaries of any graded school district without the consent of a majority of the trustees of said district, which consent shall be spread upon the record of the district, and placed on file in the office of the clerk of the township or city to which the reports of said district are made: Provided, however, That any three or more taxpaying electors having children between the ages of five and twelve years, residing one and one-half miles or more from a school house in such district, feeling themselves aggrieved by any action, order or decision of the board of trustees with reference to the alteration of said school district affecting their interests, may, at any time within sixty days from the time of such action on the part of said board of trustees, appeal from such action, order or decision of such board of school trustees to the judge of probate of the county in which such schoolhouse is situated, in the same manner, as nearly as may be, as appeals from the action of the township board, as provided by Chapter 9 of this act. Said appellants shall file a bond with said judge of probate, with sufficient sureties to be approved by said judge of probate, in the penal sum of not exceeding two hundred dollars in the discretion of the court, indemnifying said school district of any and all costs made on such appeal in case the appellants shall not prevail therein. Whereupon said judge of probate shall be empowered to entertain such appeal, and review, confirm or set aside or amend the action of the board of trustees appealed from."

In our judgment the above quoted section prescribes inconsistent duties for the two offices to which you refer, inasmuch as the judge of probate is authorized upon appeal to review, confirm or set aside the action of the board of education or board of trustees. This conflict of duties constitutes incompatibility between the offices and therefore the acceptance of the second office operates to vacate the first.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-k-o.

JUSTICE OF THE PEACE. FEES. A justice of the peace is entitled to a fee of \$1.50 for each person arraigned even though the accused persons are jointly charged.

March 30, 1911.

Mr. Louis H. Osterhous, Prosecuting Attorney, Grand Haven, Michigan:

Dear Sir—Your letter of recent date received. Therein you say:

"Under the law a justice of the peace is entitled to a fee of \$1.50 for each arraignment in criminal cases.

"Assume a case where two or more parties are jointly charged, under one complaint, with one offense; one warrant is issued; the accused persons are brought together before the justice issuing the warrant and arraigned. Is the justice entitled to a fee of \$1.50 for that arraignment of the several persons accused, under that one warrant, or a fee of \$1.50 for each of the several accused persons so arraigned?

"In past years the board of supervisors has always paid \$1.50 for each person charged, where several are arrested upon one complaint and warrant. The justices claim they are entitled to so charge, and a number of cases involving this question will be before our board at its next meeting. It has been my claim that but \$1.50 can be charged for one arraignment of several persons arrested under one warrant, and that a justice is not entitled to receive \$1.50 for each person arraigned."

In reply would say that we are inclined to believe that the justice of the peace under the foregoing statement of circumstances is entitled to his fee of \$1.50 for each of the persons arraigned before him. In our judgment the fact that the accused persons were jointly charged under one complaint with one offense and that only one warrant was issued would not affect the justice's right to his statutory fee for each of such persons so arraigned. Sections 12003 and 12004 provide:

Section 12003. "For the following services hereafter performed, in the cases authorized by law, the officers hereinafter named shall be allowed, respectively, the fees in this chapter directed."

Section 12004, in part:

"JUSTICES OF THE PEACE.

" * * * * * For each arraignment and receiving a plea of guilty, in case such plea is entered, one dollar and fifty cents; for each arraignment where the plea of not guilty is entered, or where examination is waived or demanded, one dollar and fifty cents * * *"

Thus in the words of the statute the fee is not only for arraignment but also for receiving the plea. Suppose two persons are arraigned at the same time before the same justice under one complaint and charged with the same offense, and suppose one of said persons pleads guilty and one not guilty. Is not the justice entitled to his fee for the arraignment and receiving of the plea of guilty, and equally so for the arraignment and receiving of the plea of not guilty? We are of opinion that he is within his rights under the statute in demanding a fee for each person arraigned before him.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

INSANITY LAW. The Probate Court has authority to award costs against an insane person or his guardian upon application to commit as a private patient.

March 30, 1911.

Mr. Arthur D. Wood, Judge of Probate, Munising, Michigan:

Dear Sir—We are in receipt of your letter of March 20th referring to our letter of March 18th and stating that you desire to be advised whether the county stands the expense of holding an insane examination where petition is made that a person be committed as a "private patient," or is the expense of holding the examination to be paid by the petitioner or other party.

In reply thereto will say that Section 39 gives the court authority to award costs against the defeated party and states what costs may be awarded. In the case of application for admission as a private patient, if the order for admission is granted you would have authority to award the costs against the insane person or his guardian. If the order is denied you would have authority to award the costs in your discretion against the petitioner.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

SCHOOL OFFICES. SOLDIERS' EXEMPTION. A school officer claiming the benefit of the soldiers' exemption tax law vacates his office. He also loses his right to vote upon the question of raising money.

JUSTICES OF THE PEACE. SOLDIERS' EXEMPTION. The fact that a soldier claims the benefit of the soldiers' exemption tax law does not make him ineligible to the office of justice of the peace.

March 30, 1911.

Mr. Glen C. Wiley, Hubbard Lake, Michigan:

Dear Sir—Your letter of the 23d inst. addressed to the Auditor General and by him referred to this department, received. Therein you say that the person who holds the office of moderator of your school district is a Civil War veteran; that at the time of his election he was a taxpayer but that he has since taken advantage of the Soldiers' Exemption Tax Law and has ceased to pay taxes. You ask if he can lawfully hold the office of moderator of your school district.

In reply will call your attention to Section 48 of the pamphlet of General School Laws, Revision of 1909, which reads, in part:

"A school district office shall become vacant immediately upon any of the following events:

First, The death of the incumbent * * * * * ;

Eighth, His ceasing to be a taxpayer in the school district * * * ."

Therefore in view of the above it is our opinion that the office of moderator is not properly filled by said war veteran and that quo warranto proceedings would lie to oust him from said office.

Respecting the right of said war veteran to vote on the question of

raising money at a school meeting, will refer you to Section 43 of the General School Laws, Revision of 1909, which provides, in part:

"On the question of voting school taxes, every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district, and who has resided in the district, as above stated, shall be a qualified voter."

Therefore if said veteran owns no property which is assessed for school taxes in your district, he is not entitled to vote on the question of raising money at school meetings.

We do not find that the paying of taxes is a necessary qualification of a person holding the office of justice of the peace. Section 2382, Compiled Laws of 1897, prescribes the necessary qualifications of township officers. Said Section reads, in part:

"No person except a citizen of the United States and an elector as aforesaid shall be eligible to an elective office contemplated in this chapter."

Even if said justice were not qualified in law to hold said office, but held it under color of right, he would be a de facto officer and his official acts would be valid.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

INCOMPATIBILITY. JUSTICE OF THE PEACE AND MEMBER OF THE SCHOOL BOARD. TOWNSHIP OFFICES. VACANCIES. TOWNSHIP TREASURER. Justice of the peace ineligible to the office of member of school board. Vacancies caused by the death or resignation of two justices may be filled at the annual township meeting. Where a quorum is not present to make the annual settlement to the township treasurer, the settlement will have to be postponed until a quorum is present.

March 30, 1911.

Mr. Clarence M. Browne, Prosecuting Attorney, Saginaw, W. S., Michigan:

Dear Sir—Your letter of the 22nd instant received. Therein you propound several questions, which we will discuss in the order in which they are asked.

Your first proposition is as follows:

"A duly elected and qualified justice of the peace, while holding such office, was elected a district school officer and qualified and is now holding said offices in his township.

Question: Can said person hold both offices, and if not which office is he entitled to hold and which office, if any, has he vacated?"

Assuming that you are organized as a township school district, under Act 117 of the Public Acts of 1909, as seems to be intimated in your letter, will refer you to Section 209 of the pamphlet edition of the general school laws, revision of 1909, which provides in part:

"The several township officers shall be ineligible to election as members of the board of education during the term for which they were elected and any votes cast for such township officers for members of the board of education shall be void."

Therefore, the justice of the peace being a township officer is ineligible to election as a district school officer and consequently, at the present time he holds the office of justice of the peace and the district school office is vacant.

Your second proposition is:

"A school officer duly elected and qualified and holding said office, was elected to a township office, requiring him to act as a member of the township board. Question: Can he serve in both offices, and if not, which office does he vacate?"

Referring back to Section 209 of the General School Laws, previously quoted, it will be perceived that the express prohibition of the statute is against township officers being elected district school officers. The point which you present is slightly different in that a district school officer is elected a township officer and not vice versa, as stated in the statute. However, we believe it was the intention of the legislature, in the section to which reference is made, to prohibit one man from holding any township office and membership on the board of education (district school office) at the same time, consequently his election to the township office was void under the statute and he retains the district school office.

Your third proposition is this:

"A township officer and member of the township board serving as such was duly elected a school district officer within the township. Question. Can he hold both offices and if not, which one does he vacate?"

Our answer to query number one covers the point raised by your third proposition.

You state further:

"A township board has been depleted by the resignation and death of the two justices, and the remaining two justices of the peace have removed from the township so that the board is disorganized. Question: Can the vacancies in the offices of justices of the peace be filled at the annual township meeting, without the posting of notices as required for the filling of such vacancies at a special township meeting, or must these offices be filled only at such special township meeting?"

Your attention is called to Section 2294 of the Compiled Laws of 1897 which reads:

"Special township meetings may be held for the purpose of choosing officers to fill any vacancy that may occur, if the township board shall deem it expedient, and make their order therefor; and in case the said township board became disorganized, or reduced below the number of a quorum, as provided by law, by, or through the death or removal of the officers composing the same, or from any other cause, then such special township meeting may be called and proceeded in, in all respects, as in the case of newly organized townships."

However, it is our opinion that said last quoted statute is directory in its terms and simply provides a way of filling vacancies in township offices at special meetings when it is not convenient or expedient to wait until the next annual meeting. We think you may elect two justices to fill existing vacancies at your next annual township meeting, under authority of Section 2275 of the Compiled Laws of 1897, which reads:

"The annual meeting of each township shall be held on the first Mon-

day in April, in each year, and at such meeting there shall be an election for the following officers:

One supervisor, one township clerk, one treasurer, one school inspector, one commissioner of highways, so many justices of the peace as there are by law to be elected in the township, and so many constables as shall be ordered by the meeting, not exceeding four in number."

Respecting your next inquiry, will say that the safe course to pursue in the election of justices of the peace at annual township meetings to fill unexpired terms, is to post the statutory notice.

When there is a vacancy to be filled and the electors at their party caucus, neglect to nominate candidates for said office, any elector may write the name of the office and the name of his candidate for that office in a proper place upon the ballot and it would be entitled to be counted by the inspectors.

The following is your last proposition:

"Suppose that when the township treasurer comes to settle with the township board on settlement day, and there are not enough members to constitute a quorum, owing to the fact that all of the justices of the township have vacated their offices by death or resignation or removal from township with whom shall the treasurer settle?"

With reference to this last question will say that we find no provision in the law covering such a contingency. Since, however, a meeting of the township board cannot be held without a quorum being present and since the law provides that the township board shall audit and examine the accounts of said township treasurer, we believe the settlement with the treasurer would be postponed until such time as a quorum of the township board could be assembled.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-in-o.

MARRIAGE LAW. Marriages performed pursuant to Act 180 of the Public Acts of 1897, as amended, do not require the consent of parent or guardian in case the parties are over the age fixed by Section 8588, Compiled Laws. If under the age fixed by that section, the consent of only one of the parents of the person under marriageable age is required.

April 7, 1911.

Hon. David Anderson, Judge of Probate, Paw Paw, Michigan:

Dear Sir—We are in receipt of your letter of the 30th ultimo, submitting the following inquiries relative to the secret marriage law, Act 180 of the Public Acts of 1897, as amended by Act 232 of the Public Acts of 1899:

"First. Is a female of the age of 16 but under 18 of marriageable age, and within the meaning of Section 1, Act 232, Public Acts of 1899? Or does that apply solely to a female under 16?

Second. If it be held that a female between the ages of 16 and 18 require the written consent of parent or guardian under this section, is the consent of more than one of them required, providing both be living?

Third. Is the consent of more than one necessary if the female be under the age of 16 years?"

Section 8588 of the Compiled Laws of 1897 provides:

"Every male who shall have attained the full age of eighteen years and every female who has attained the full age of sixteen years, shall be capable in law of contracting marriage if other-wise competent."

Act 232 of the Public Acts of 1899 to which you make reference in your letter provides in part as follows:

"Provided that such judge of probate shall have authority to marry persons under marriageable age * * * * in cases in which the application for such license is accompanied by the written request of the parents of both parties if living and their guardian, or guardians, if either or both of the parents are dead or by the written request of the parent or guardian, as the case may be, of the one under marriageable age where only one is under the marriageable age now fixed by statute when according to his judgment such marriage would be a benefit to public morals."

This enactment is entirely separate from the marriage license law, so-called, Section 8602, et seq., Compiled Laws, and which requires the consent of the parents in case the girl is under the age of eighteen. The provisions of Section one of Act 232 of the Public Acts of 1899 are clear as to their reference to *marriageable age*. In no place is marriageable age defined in our statute except in Section 8588, above quoted. The marriage license law does not purport to change the marriageable age, but simply requires the consent of the parents in case the girl is under the age of eighteen years. It is our view that in the case of marriages performed pursuant to the provisions of Act 180 of the Public Acts of 1897, as amended by Act 232 of the Public Acts of 1899, the consent of the parent or guardian in case the parties are over the age fixed by Section 8588 is not required; under that age the request of the parent or guardian must be made.

We do not think the request of more than one of the parents of each of the contracting parties is required where both are under marriageable age as fixed by Section 8588.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CONSTITUTIONAL LAW. SOLDIERS' MONUMENTS. The Legislature has authority to pass a general law providing for the raising of money by townships by taxation to erect a soldier's monument.

April 7, 1911.

Hon. William L. Baldwin, Representative Hall, Capitol, Lansing:

Dear Sir—Replying to your letter of April 4th, will say that I know of no reason why a general law providing for the raising of money by townships by taxation for the erection of a soldier's monument would be unconstitutional.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CITIZENSHIP. Children of parents naturalized before such children are 21 years of age become citizens of the United States.

April 7, 1911.

Mr. Enos M. Stauffer, Germfask, Michigan:

Dear Sir—Your letter of recent date received. Therein you make the following inquiry:

"A boy born in Canada came to this country with his parents when he was four years old and lived and became of age in Michigan. His father took out his intention papers, also full citizen papers before his son became of age. Must his boy take out any papers or is he a full citizen without taking out any papers. Can he hold a township office."

In reply will say that children of parents who have been duly naturalized under any law of the United States and who are under the age of twenty-one years at the time of the naturalization of their parents, are, if dwelling in the United States to be considered citizens thereof. The status of minor children is dependent upon and follows that of their parents. Where the father of minor children becomes a citizen of the United States through naturalization, all minor children of such person, dwelling in the United States, would thereby become citizens of the United States.

Therefore, we believe the person referred to in your letter to be a full citizen of the United States and eligible to hold a township office, if he is an elector of the township wherein he desires to be an officer.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

STATE BOARD OF HEALTH. WATER SUPPLY COMPANIES. Under Act 28 of the Public Acts of 1909, a private corporation operating a water plant cannot be required to furnish plans and specifications of a part of the plant or the site not owned or controlled by it.

April 7, 1911.

Dr. F. W. Shumway, Secretary, State Board of Health, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of March 29th, enclosing two letters from James V. Oxtoby, Attorney-At-Law, Detroit. The question raised by these letters is the extent of the supervision of the State Board of Health, under the provisions of Act 28 of the Public Acts of 1909, over the plants of the Edison Illuminating Company and the Peninsular Electric Light Company, of Detroit.

Section 1 of Act 28 of the Public Acts of 1909, provides as follows:

"The State Board of Health and its authorized agents and representatives are each hereby given supervisory and visitatorial power and control over all corporations other than municipal, partnerships and individuals engaged in furnishing water to the public for household or drinking purposes and over the plants and systems owned or operated by such companies or individuals."

The material facts as they appear from the letters of Mr. Oxtoby are as follows:

The pipes, mains, intakes and the entire water works system of the villages of Grosse Pointe Farms and Grosse Pointe Park are owned by the respective municipalities. The companies referred to operate electric pumps under a contract with the villages, by which the water is pumped through the village intakes into the village mains to the consumers. The contract between the villages and companies is simply for the operation of the pumps. The companies have nothing to do with the source of supply of the water or the care and maintenance of the intakes or water mains. The companies are willing to furnish plans and specifications of their pumping plants, but raise the question as to whether the act, above mentioned, requires them to furnish plans and specifications of the entire water works system, which belongs to the villages.

An examination of the provisions of Act 28 of the Public Acts of 1909, shows that the act is intended to give the State Board of Health supervision over water works systems other than municipal for the purpose of protection of the public health. It is our view that this act is intended to apply only to those cases wherein the corporation, partnership or individual controls the pipes, mains and sources of water supply. Certainly a private corporation or individual could not be required to furnish plans and specifications of a plant or system not owned or controlled by them for the reason that they would have no method of obtaining such plans and specifications in case of refusal of the parties owning or controlling said system. On the other hand, if pipes, mains and intakes, as in this case, are owned by a municipal corporation, any order which the State Board of Health might make directed to the corporation could not be enforced against the objection of the municipality, which under the law has control of its own property. Under the statement of facts contained in Mr. Oxtoby's letters, we are of the opinion that in offering to furnish plans and specifications of the pumping plants of the companies named, he has offered to do all that can be required under the provisions of Act 28 of the Public Acts of 1909 by your board.

The letters of Mr. Oxtoby are herewith returned.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o-encls.

FRATERNAL BENEFICIARY SOCIETIES. A member of a fraternal beneficiary society cannot complain of his suspension if he has not taken an appeal therefrom to a tribunal authorized by the order to hear such appeal.

A member of a fraternal beneficiary society cannot pursue his remedy in the courts until he has exhausted his remedy within the order.

April 7, 1911.

Hon. C. A. Palmer, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—We have examined the correspondence referred to us by your department, relative to the suspension of certain members from the Knights of the Modern Maccabees. You desire to know whether any action can be taken by your department to secure the re-instatement of these members.

It appears from the correspondence that one was expelled from the order and three were suspended for a period of years. Three of the parties have not taken an appeal in accordance with the rules of the order. The fourth has taken an appeal to the Great Camp, which cannot be heard until the next quadrennial review. Under the statement of facts submitted, we do not think there is anything that the insurance department can do under our statutes to compel a re-instatement of these members.

Under the decision in Conley vs. Supreme Court I. O. F., 158 Mich. 190, a member cannot complain of his suspension if he has not taken an appeal therefrom to the tribunal authorized by the order to hear such appeal. Neither is he entitled to pursue his remedy in the courts until he has exhausted the remedy within the order. Three members mentioned in the correspondence having acquiesced in their suspension by declining to take an appeal have no grievance which would authorize you to take action in their behalf against the company. The fourth has no cause for complaint until it is determined whether his appeal to the Great Camp results in a confirmation of the decision of the executive committee, or in his re-instatement.

The correspondence is herewith returned.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o-encl.

EXEMPTION. TAXATION. Property of Arbeiter Society is not exempt from taxation.

April 7, 1911.

Hon. John Leidlein, State Senator, Capitol, Lansing:

Dear Sir—Replying to the letter of Mr. Bernard Porsinger, addressed to you, and by you referred to this department for consideration, will say that we do not believe that the property of the Arbeiter Society of Saginaw is exempt from taxation under Section 3830 of the Compiled Laws of 1897, as amended.

Said Section 3830, as amended, reads in part as follows:

"The following real property shall be exempt from taxation. * * * *
Fourth. Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions incorporated under the laws of this State, with the building and other property thereon, while occupied by them solely for the purposes for which they were incorporated: Provided, That such exemption shall not apply to fraternal or secret societies, but all charitable homes of such societies shall be exempt."

The question which you submit for our opinion was passed upon by our Supreme Court in the case of Attorney General vs. Common Council of Detroit, 113 Mich. 388, in which it was held that the property of the Arbeiter Society is not exempt from taxation.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

CORONERS. PROSECUTING ATTORNEY. A prosecuting attorney does not encroach upon the prerogatives of a coroner in conducting a post mortem independent of a coroner's inquest.

April 7, 1911.

Mr. H. H. Collins, Coroner, Howell, Michigan:

Dear Sir—We are in receipt of your letter of April 4th with reference to the claimed encroachment of Prosecuting Attorney W. E. Robb upon your prerogatives as coroner.

In reply thereto will say that in the case submitted by you, having performed the duties imposed upon you by law as coroner and having decided under the provisions of Section 11821, Compiled Laws, that a post mortem was not necessary, your duties in the matter were ended. Whatever the prosecuting attorney did in the matter of holding an inquest after that time could not be said to be an encroachment upon any prerogative which the statute confers upon you.

In the second case submitted by you, upon receiving a notice required by statute you would have been entitled to hold a coroner's inquest upon the body of the person without reference to the post mortem held by the prosecuting attorney.

We fail to see any way in which the prosecuting attorney of Livingston county has encroached upon your authority as coroner in the cases submitted in your letter.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

CONSTITUTIONAL LAW. CITIES. LOCAL LEGISLATION. The Legislature has no authority to pass a special act permitting a single city to build bridges, pave streets, etc., without advertising and receiving bids for the construction of the same.

April 7, 1911.

Hon. F. H. Dusenbury, Representative Chamber, Capitol, Lansing:

Dear Sir—Replying to the inquiry submitted by you as to whether a special act can be passed permitting the city of Mt. Pleasant to build bridges, pave streets, etc., without advertising and receiving bids for the construction of the same and letting the same to the lowest bidder, will say that the Revised Constitution prohibits the enactment of a local act where a general law can be made applicable. A general law is now on the statute books prescribing the method for the letting of contracts for the construction of bridges, pavement of streets, etc., in cities of the fourth class, of which Mt. Pleasant is one. It follows that the Legislature is without authority to pass an enactment such as you submit which is to be limited in its application to a single city.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

BALLOTS. HOW TO BE COUNTED. A ballot containing republican and democrat tickets with cross in circle at the head of the republican ticket and a slip over the name of democratic candidate for treasurer should be counted as a vote for every republican candidate.

April 12, 1911.

Mr. Fred Howe, Elm Hall, Michigan:

Dear Sir—I have the ballot before me which you recently forwarded in regard to which you wish to be advised how it should be counted. The ballot in question contains the republican and democratic tickets. A cross is made in the circle at the head of the republican ticket and a slip containing the words "For Treasurer, Eugene T. Walker" is pasted over the name of the democratic candidate for treasurer. There are no other marks upon the ballot. This ballot should be counted as a vote for every republican candidate. If the voter wished to vote for Eugene T. Walker for treasurer, the slip should have been pasted over the republican candidate for that office or a cross placed in the square to the left of the name of the candidate appearing upon the slip.

You have evidently forwarded to me official ballot No. 303 and official ballot No. 304. Permit me to call your attention to the language of Section 3645 of the Compiled Laws of 1897, being Section 172 of the election laws of 1909, which reads as follows:

"The board of inspectors of election shall preserve the unused ballots, together with the ballots which have been spoiled, and return the same to the city or township clerk, with a statement of the number of ballots used, and there shall be given by the clerk to the inspectors of election a receipt therefor, which shall be filed with the chairman of the board."

The ballots which you have forwarded are evidently unused ballots. By virtue of what authority are they in your possession to be forwarded to any one?

The ballots forwarded to me are herewith returned.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

L-m-o.

ELECTORS. CHANGE OF RESIDENCE. An elector moving into another township ten days before election is not entitled to vote in either township.

April 12, 1911.

Mr. Allen Crawford, Jr., Springport, Michigan:

Dear Sir—Your letter of the 30th ultimo received. Therein you ask:

"If a citizen of one township moves into the next township ten days before election, can he come back from the place he moved and vote or does he lose his vote?"

Replying to the above question will say that a voter who changes residence from one township to another within twenty days before election cannot vote in either township.

You further inquire:

"Must a voter make application in person to the registration board, or could a father hand in the name of a son, or if the person was well acquainted with any of the board could he telephone them that he wished his name registered?"

We assume your question has reference to township elections. Your attention is called to Section 3546 of the Compiled Laws of 1897, which reads in part as follows:

"After the year one thousand eight hundred and fifty-nine, it shall be the right of any such qualified elector residing in the township, and entitled to vote at the next election therein, and whose name has not been registered, on any day except Sunday, the days of the session of the board of registration, and the days intervening between them and the next approaching election, to apply to the supervisor, township treasurer, or township clerk, in person, for the registration of his name, etc."

We believe the statute is explicit in its provision that application for registration shall be made in person. Consequently, a father cannot apply for the registration of his son's name, but the son must do so personally. It is our view that application by telephone is not application in person, as contemplated by the statute.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-m-o.

LOTTERIES. A so-called suit club is a lottery within Section 11344, Compiled Laws.

April 12, 1911.

Hon. John Leidlein, State Senator, Capitol, Lansing:

Dear Sir—Letter of Messrs. Jaeckel & Rau, Saginaw, Michigan, addressed to you and by you referred to this department, received and considered. Therein substantially the following proposition is submitted:

Is it lawful to conduct a suit club on the plan hereinafter outlined: Membership to consist of from thirty-five to one hundred, each member to pay one dollar per week, each week one member draws a suit of clothes valued at \$25.00?

In reply will call your attention to the case of *People vs. McPhee*, 139 Mich. 687, which holds that a suit club is a lottery within the meaning of Section 11344 of the Compiled Laws of 1897 and is therefore prohibited.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

SCHOOL ELECTION. BOND LIMIT. RATE OF INTEREST. Voters of a school district are not necessarily limited to the amount of bond issue estimated in the notice given by the board. Rate of interest on bonds may be prescribed at special meeting.

April 12, 1911.

Hon. Luther L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—I have before me the communication of William J. Orr under date of April 8th, directed to yourself, which you have referred to this Department. It appears from Mr. Orr's letter that a notice was given for bonding a district for four thousand dollars but at the meeting the voters voted to bond for five thousand. It is asked whether this is legal.

In reply thereto would say your attention is directed to Section 91 pamphlet of general school laws, revision of 1909, which provides in part that:

"At said meeting the voters shall have power to ratify by the vote aforesaid the estimate of the district, or board of education, or to fix a new limit on the amount to be borrowed and for which bonds may be issued."

In accordance with the foregoing the voters of a district are not necessarily limited to the amount estimated in the notice given by the board. If therefore, the amount voted does not exceed the amount limited by statute in the district in question, the action of the voters would not be subject to objection.

It is also stated that the notice for the meeting provided that the rate of interest should not exceed five per cent but that the meeting did not take action on the rate of interest to be paid on the bonds. It is asked if at the next meeting the rate of interest can be decided by a ye and nay vote, or if it must be by ballot.

In view of the fact that the rate of interest was not prescribed I am inclined to think that it would be proper to prescribe the rate at a special meeting called for that purpose. The law seems to be silent upon the question of whether it should be by a ye and nay vote or by ballot. Either course would seem proper if the action is regularly taken and a complete record thereof kept.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

HIGHWAYS. Local Act 293 of 1905 is repealed by the general highway law, Act 283, Public Acts of 1909.

April 14, 1911.

Mr. Stanley W. Lambert, Assistant Prosecuting Attorney, Port Huron, Michigan:

Dear Sir—Your letter of recent date received. Therein you ask whether Act No. 108 of the Public Acts of 1907, entitled "An act to provide for the assessment of money taxes for highway purposes and to repeal chapter two 'Assessment for highway purposes' and chapter three 'The performance of labor on highways and the commutation therefor,' of Act number two hundred forty-three of the Public Acts of eighteen hundred eighty-one, as amended, being compiler's Sections numbers four thousand seventy-two to four thousand one hundred three inclusive, of the compiled laws of eighteen hundred ninety-seven and all acts and parts of acts inconsistent with the provisions hereof," repeals act No. 293 of the Local Acts of 1903, entitled "An act to provide for the assessment and collection of highway taxes, and the expenditure thereof, in the township of Port Huron, Saint Clair county, Michigan."

In reply thereto will say that Act No. 108 of the Public Acts of 1907 supra, was superseded by Act No. 283 of the Public Acts of 1909, entitled "An act to revise, consolidate and add to the laws relating to the establishment, opening, improvement, maintenance and use of the public highways and private roads, the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; setting and protecting shade trees, drainage, cutting weeds and brush within this State, and providing for the election and defining the powers, duties and compensation of State, county, township and district highway officials." This being the case the question presents itself, does Act No. 283, Public Acts of 1909 repeal Local Act 293 of 1903.

Upon investigation we are inclined to believe that said local act has been repealed by Act 283 of the Public Acts of 1909. It is undoubtedly the rule that a general affirmative act without express words of repeal does not operate to repeal a previous special or a local act on a similar subject even though the two acts may be inconsistent and the terms of the general act broad enough to include any case covered by the local act. However, this is a rule of construction and not one of positive law. In determining whether one act, local or general, is repealed by another and later general act, it is necessary to discover if possible what the intention of the legislature was in passing the subsequent act.

This legislative intent may be ascertained by an examination of the subject matter of the general act concerned, the purpose to be accomplished thereby and anything else which may serve to throw light upon the inquiry. It appears in this case by consulting the title of Act 283, Public Acts of 1909, that it was intended by that Act to revise and consolidate the road laws. Pertinent to the question here involved we quote Lewis' Sutherland Statutory Construction, Vol. 1, page 515, Section 269, as follows:

"Revision of statutes implies a re-examination of them. The word is applied to a restatement of the law in a corrected or improved form. The restatement may be with or without material change. A revision is intended to take the place of the law as previously formulated. By adopting it the legislature say the same thing, in effect, as when a particular section is amended by the words 'so as to read as follows.' The revision is a substitute; it displaces and repeals the former law as it stood relating to the subject within its purview. Whatever of the old law is restated in the revision is continued in operation as it may operate in the connection in which it is re-enacted.

"In *Bartlet v. King*, Dewey, J., said: 'A subsequent statute revising the whole subject-matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must on principles of law, as well as in reason and common sense, operate to repeal the former.'

"Though a subsequent statute be not repugnant in all its provisions to a former, yet if it was clearly intended to prescribe the only rule which should govern, it repeals the former statute. Without express words of repeal a previous statute will be held to be modified by a subsequent one, if the latter was plainly intended to cover the subject embraced by both, and to prescribe the only rules in respect to that subject that are to govern. Where a provision is amended by the form 'to read as follows,' the intention is manifest to make the provision following a substitute for the old provision and to operate exclusively in its place. Does a revision import that it shall displace the last previous form; that it is evidently intended as a substitute for it; that it is intended to prescribe the only rule to govern? In other words, will a revision repeal by implication previous statutes on the same subject, though there be no repugnance? The authorities seem to answer emphatically, Yes. The reasonable inference from a revision is that the legislature cannot be supposed to have intended that there should be two distinct enactments embracing the same subject-matter in force at the same time, and that the new statute, being the most recent expression of the legislative will, must be deemed a substitute for previous enactments, and the only one which is to be regarded as having the force of law. In case of an act 'to revise, amend and consolidate the laws for the incorporation of ecclesiastical bodies,' it was held that the use of the word 'consolidate' indicated very clearly that the purpose of the legislature was to collect in one act all the law relating to the subject. In all cases of repeal by revision the absence of express words of repeal is unimportant."

We also refer you to the case of *Barker v. Town of Floyd*, 61 N. Y. Appellate Div. 92 (96). Judge Laughlin in that case uses the following language:

"It is now a well settled rule of statutory construction that a general statute covering the same subject-matter and containing new provisions manifestly designed by the legislature to embrace the entire law upon the subject operates to repeal by implication a former general or special statute, even though the two are not repugnant," quoting numerous cases.

In his opinion in the case of *Alexander v. Mayor and City Council of Baltimore*, 53 Md. 100 (104), Judge Irving says:

"If the intention of the legislature in the passage of later laws, by its language clearly indicates, either expressly or by necessary implication, a purpose to substitute a new scheme of laws for the pre-existing law, general and local, or to repeal the local by the adoption of a new general law, clearly intended to operate equally throughout the State, the local law must yield to that intention thus ascertained."

Mr. Justice Magruder in his opinion in the case of *People ex rel. Deneen, States Attorney v. Town of Thornton*, 186 Ill. 162 (172-173) delivered the following:

"It is a well settled principle of statutory construction, that a subsequent statute which revises the whole subject of a former one, and is intended as a substitute for it, operates as a repeal of the former, although it contains no express words to that effect. (*Culver v. Third National Bank of Chicago*, 64 Ill. 528; *Andrews v. People*, 75 id. 605; *Devine v. Comrs. of Cook County*, 84 id. 590; *People v. Board of Education*, 166 id. 388). This rule, thus announced, is applicable even when the provisions of a prior law are contained in a special act. (*Andrews v. People*, supra; *People v. Board of Education*, supra.) Where the legislature frames a new statute upon a certain subject matter, and the legislative intention appears from the latter statute to be to frame a new scheme in relation to such subject matter and make a revision of the whole subject, there is in effect a legislative declaration, that whatever is embraced in the new statute shall prevail, and that whatever is excluded is discarded. The revision of the whole subject matter by the new statute evinces an intention to substitute the provisions of the new law for the old law upon the subject. (*Black on Interpretation of Laws*, p. 116; *Murdock v. Mayor of Memphis*, 20 Wall. 590.)"

In the case of *Attorney General ex rel. Fuller v. Parsell*, 100 Mich. 170, Judge Grant says:

"It would seem in accordance with reason to hold that, when the legislature revises and consolidates certain acts, and covers the entire subject, the act, as revised and consolidated, supersedes and repeals all other acts in relation thereto. The very terms 'revise' and 'consolidate' imply the intention to include in such act entire control over the subject, and to exclude all prior enactments." (173.)

In view of the above authorities we are of the opinion that the local act to which your inquiries have reference is repealed by Act No. 283 of the Public Acts of 1909.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

TOWNSHIPS. DEEDS. Township board has no right to sell township lands without authorization by the electors.

BOARD OF SUPERVISORS. LOCAL LEGISLATION. The board of supervisors has no right to pass an ordinance or law changing the open season for hunting deer.

April 14, 1911.

Mr. John Caldwell, Prosecuting Attorney, Mio, Michigan:

Dear Sir—Your letter of the 29th ultimo received. Therein you state:

“The deed to forty acres of land is made out to the township of Comins, Oscoda county, Michigan. Have the township board authority to sell this land and give deed to same without a vote of the taxpayers?”

In reply will direct your attention to Section 2268 of the Compiled Laws of 1897, which reads:

“The inhabitants of each organized township shall be a body corporate, and as such may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate for the public use of the inhabitants, and to convey, alienate and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of their corporate powers, and any orders for the disposal of their corporate property which they may judge expedient.”

We are led to believe from a consideration of the foregoing that the township board would have no right to proceed to sell land belonging to the township without first being authorized so to do by vote of the electors thereof.

You ask further:

“Have the board of supervisors of the county, acting on a petition from the voters of the county, a right to close the hunting season in that county for a number of years, making it unlawful to hunt and kill deer during the period specified?”

To our knowledge, the only law which undertakes to confer such power upon the board of supervisors in this State is Section 11 of Act No. 322 of the Public Acts of 1909. Said section has been held unconstitutional by this Department. (See Attorney General's Report for 1910, page 208.)

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

GOVERNOR. MOTOR VEHICLE LAW. The Governor has no right to suspend the operation of the Motor Vehicle Law.

Automobiles from the Dominion of Canada are not entitled to the reciprocal features of the Motor Vehicle Law.

April 18, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—We are in receipt of your letter of April 12th with enclosure, requesting the opinion of this Department as to whether you have a right to grant a special concession to automobile tourists under the license issued by their home state without taking out a Michigan license, to tour through the State of Michigan. The particular states involved are Michigan, Ohio, Pennsylvania and New York, and the Dominion of Canada.

Your attention is directed to Section 5 of Act 318, Public Acts of 1909, known as the motor vehicle law relative to the exemption of non-resident owners. This Section contains this proviso:

“That non-residents shall not be exempted from the foregoing sections unless the State of his residence extends similar privileges to motor vehicles registered under this law.”

We are advised by the Secretary of State that the states of Michigan, Ohio, Pennsylvania and New York do extend privileges similar to those enumerated in Section 5 to non-resident tourists. The Dominion of Canada does not extend such privilege. It requires every non-resident to pay a four dollar license fee and five dollars for an indemnity bond before entering the Dominion. We do not think the Governor has authority to suspend the operation of any of the statutes of the State and it is our view that automobiles belonging to residents of Canada would not be entitled to tour through the State of Michigan without compliance with the motor vehicle law.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o.

INCOMPATIBILITY. ALDERMAN AND CITY ASSESSORS. The offices of alderman and city assessor are incompatible under the fourth class city law.

April 20, 1911.

Hon. W. Frank James, State Senator, Capitol, Lansing:

Dear Sir—Your letter of the 17th instant received. Therein you ask if a member of the city council of a city of the fourth class can be appointed by the mayor to act as city assessor.

In reply will refer you to Section 3318 of the Compiled Laws of 1897, which, after providing that the supervisors of every city shall make a complete assessment of all the real and personal property therein, etc., continues as follows:

“Provided, That any city now incorporated, and which shall become re-incorporated under this act, now having an assessor for the assess-

ment of property and the levying of taxes, such city may retain its present method of assessing property and levying taxes, and such assessor in office at the time this act shall take effect, shall remain in office until the expiration of the term for which he was appointed or elected and until his successor shall have been appointed and qualified. The council of any city re-incorporated under the provisions of this act may by ordinance provide for the appointment by the council upon the recommendation of the mayor, a city assessor who shall hold his office for one year from and after the first Monday in March of the year in which he shall have been appointed, and such appointment shall be made as aforesaid on or before the second Monday in April in each year."

It will be perceived from a consideration of the foregoing that the council makes the appointment of a city assessor upon the recommendation of the mayor.

Furthermore, we are of the opinion that the offices of member of the city council of a city of the fourth class and city assessor are incompatible and cannot be held simultaneously by one person. This incompatibility arises from the fact that the city council, under the provisions of Section 3060 of the Compiled Laws of 1897, prescribes the compensation of city officers, of whom the city assessor is one.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

LOCAL OPTION LAW. The establishment of a saloon within four hundred feet of a citadel erected by the Salvation Army is prohibited under the provisions of the general liquor law, prohibiting the establishment of a saloon within four hundred feet of a church.

April 20, 1911.

Mr. James S. Parker, Prosecuting Attorney, Flint, Michigan :

Dear Sir—I am in receipt of your letter of April 7th, in which you ask whether or not a citadel erected by the Salvation Army and in which religious meetings are regularly held is a church within the meaning of Section 37 of Act 291 of the Public Acts of 1909 which prohibits the establishment of a new bar or saloon within four hundred feet of any church. Also whether or not an incorporated village of less than 500 inhabitants may license one saloon.

For reply thereto would say that a church has been defined as "a building set apart for Christian worship; a temple or building consecrated to the honor of God and religion;" also "a building in which people assemble for the worship of God and for the administration of such offices and services as pertain to that worship."

7 Cyc. 129-130. These definitions would seem to be broad enough to include within the meaning of the word "church" any building that might be set apart for Christian worship. Until the courts hold otherwise I think we should rule that the word "church" includes all buildings set apart for Christian worship and principally or exclusively used for that purpose.

Replying to the second question would say that this department has

held that the general liquor law, as amended by Act 291, Public Acts of 1909, the title and provisions of which indicate a purpose to license and *regulate* the sale of intoxicating liquors would not be construed to *prohibit* saloons and that an incorporated village of less than 500 inhabitants would therefore have authority to license one saloon unless it has adopted an ordinance suppressing saloons under authority of the general village law.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

La-k-o.

SCHOOL DISTRICTS. Joint township boards have authority to transfer territory from a fractional district to a district of one township.

April 20, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—Your letter of recent date received. Therein you say that you are in receipt of the following statement from Mr. James J. Kelley, Commissioner of Schools of Monroe county:

"The township boards of LaSalle and Erie moved three families from district No. 8 fr. LaSalle into District No. 8, Erie with this provision: Provided, That the schoolhouse is built upon a certain site (selected by the township board and several taxpayers in district, without a request of the district.) Are those families legally transferred? Has the township board any right to make such a provision? The board rented a house in which the school is now located. It is not on the designated site. If those children are legally transferred, can district No. 8 Erie get last fall's primary for them?"

You ask our opinion on the above proposition.

Section 35, General School Laws reads, in part:

"The township board may in its discretion detach the property of any person or persons from one district and attach it to another; except that no land which has been taxed for building a schoolhouse shall be set off into another school district for the period of three years thereafter except by the consent of the owner thereof."

Therefore we believe it competent for the township boards acting jointly in the case of fractional school districts to detach property from one district and attach it to another and thereby move families from one district to another. However, we find no authority in law permitting them to condition their action upon the selection of a certain site for a schoolhouse. Section 46 General School Laws provides, in part:

"The qualified voters in any school district, when lawfully assembled at the first and at each annual meeting or at any adjournment thereof or at any special meeting lawfully called, except as hereinafter provided shall have power: * * * * * Fourth, to designate, as hereinafter provided, a site or such number of sites as may be desired for schoolhouses, and to change the same when necessary; Fifth, to direct the purchase or lease of a site or sites lawfully determined upon; the building, hiring or purchasing of a schoolhouse or houses, or the enlarging of a site or sites previously established."

Therefore the qualified electors and not the township board have the power to select sites for schoolhouses and to direct the building, hiring or purchasing of same.

From the limited knowledge of the facts in our possession we are inclined to believe that the families have been legally moved. Relative to the query as to whether, if children were legally transferred, district No. 8 Erie is entitled to last fall's primary school money, will refer you to Section 23 General School laws which states that the superintendent of public instruction shall apportion the primary school interest fund in proportion to the number of children in each township and city between the ages of five and twenty years as same shall appear by the reports of the several boards of school inspectors made to him for the school year closing prior to the May apportionment. See also Section 76 General School Laws.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

JUVENILE COURT LAW. A juvenile over the age of fourteen years, released after arrest on the charge of larceny and re-arrested on the charge of assault with intent to do great bodily harm should be placed in the custody of the sheriff and not the county agent.

A juvenile over the age of fourteen years and charged with a felony does not come within the provisions of the Juvenile Court Law, except Section 8 which applies to all children under seventeen years of age and prohibits their being placed in any cell or prison with any adult under arrest charged with a crime.

April 20, 1911.

Mr. Frank S. Jackson, Juvenile Detention Officer, Pontiac, Michigan:

Dear Sir—I am in receipt of your letter of April 14th referring to my previous opinion to the prosecuting attorney with reference to the detention of a juvenile in the county jail. You state that the juvenile was taken to Novi, Michigan, released on the charge of larceny and re-arrested on the charge of assault with intent to do great bodily harm. As I understand your inquiry, you desire to know whether or not Sheriff Tripp or yourself is entitled to the custody of the defendant.

Replying thereto would say that Section 2 of the juvenile court law, so-called, provides:

“This act shall not prevent the trial by criminal procedure in proper courts of children over fourteen years of age charged with the commission of a felony.”

The juvenile in this case being over the age of fourteen years and charged with a felony, does not come within the provisions of the law relating to delinquent children. The provisions of Section 3 of the act relating to the confinement of delinquent children in a detention room separate from the jail or police station do not therefore apply in the case under consideration.

The sheriff is therefore entitled to the custody of the juvenile in this case subject, however, to that provision of Section 8 of the juvenile court law which applies to all children under 17 years of age and reads as follows:

"No child under seventeen years of age while under arrest, confinement or conviction for any crime shall be placed in any apartment or cell or any prison or place of confinement with any adult who shall be under arrest, confinement or conviction of any crime or be permitted to remain in any court room during the trial of adults or to be transported in any vehicle of transportation in company with adults charged with or convicted of crime."

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

CITIES. SCHOOL OFFICERS. Where special city charter is silent as to the qualifications of school officers provisions of the general school law govern.

April 20, 1911.

Fred C. Wetmore, Attorney-at-Law, Cadillac, Michigan:

Dear Sir—Your letter of recent date received. Therein you state:

"The city of Cadillac is doing business under a special charter consisting of the general law of 1873 for the incorporation of cities with some amendments which were incorporated from time to time by special acts of the legislature. The general incorporation act referred to is Chapter 80 of Howell's Annotated Statutes. Section 2740 provides that the Board of Education shall consist of the Mayor and school inspectors. Section 2425 provides that certain officers shall be elected, and among these officers are three school inspectors. Section 2439 provides that no person shall be elected or appointed in any office unless he is an elector of the city. I do not find that the charter prescribes any other qualifications.

"The question is whether under our charter which is silent on this point, the provision in the general school law requiring the school officers to be taxpayers would apply."

It is our understanding that since your city charter is silent as in this case, with respect to the real estate qualifications of school officers, the general school laws of this State which require school officers to be taxpayers would apply.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

TOWNSHIP OFFICERS. OFFICIAL BOND. Bond of township treasurer may be lawfully accepted after the time prescribed by statute for filing the same.

April 20, 1911.

Mr. E. J. Brennan, Frederic, Michigan:

Dear Sir—Your letter of the 17th instant received. Therein you submit the question as to whether the bonds of the township treasurer can be lawfully accepted after the time has expired within which the law specifies that such bond shall be filed.

In reply will challenge your attention to the rule laid down in Section 265 of Mechem on Public Officers:

"The statutes requiring a bond to be given ordinarily prescribe that it shall be given within a fixed time after the officer's election or appointment. These provisions as to time, however, though often couched in most explicit language, are usually construed to be directory only and not mandatory."

Also to Section 173, Throop on Public Officers, which reads:

"Where a statute fixes the time within which the official oath must be taken, or the official bond given, the weight of the American authorities is decidedly in support of the doctrine, that the provision respecting the time is directory, although the statute declares that the office is forfeited by the default; and that unless the statute expressly declares that the failure to take the oath or to give the bond, by the time prescribed, ipso facto vacates the office, the oath may be taken and the bond given at any time afterwards, before judgment of ouster."

It is our opinion that the failure of the township treasurer to file his official bond within the time designated by the statute would not operate to vacate his office. The bond can be lawfully accepted within any reasonable time.

With respect to the member of the Board of Review who has been ill since his election and has not qualified within the statutory period, we believe the same rule applies, and that he can qualify within reasonable time after his election.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

CONSTITUTIONAL LAW. ACTION OF GOVERNOR ON VETOED BILLS. VETO OF ITEMS. TIME LIMIT. Where governor vetoes a bill he should return it with his objections to the house in which it originated.

Where the governor vetoes items in a bill he should return the bill to the house in which it originated.

The constitutional ten-day limit on bills is not a limitation as to the time when governor shall file bills with the Secretary of State. Reasons for governor's action in vetoing bills should be spread upon journal.

April 27, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—Your letter of the 25th received. Therein you submit the following questions for my consideration and request my opinion thereon:

1. In case of a vetoed bill is it necessary to return the enrolled act to the House from which it originated?
2. If an item or items of a bill is vetoed, is it necessary to return the enrolled act to the House from which it originated or should it be sent to the Secretary of State?
3. Does the constitutional ten-day limit on bills refer to the filing in the office of the Secretary of State?

4. In the event of bills received in the Executive Office on April 19, the last day of the business session and the final adjournment is fixed for May 2, you will observe that more than ten days have elapsed. In this event is the Executive Office required to send bills, items of which are voted, into the respective branches of the Legislature on April 29, the ten-day limit, or should the act be filed with the Secretary of State on or before said date.

5. In case partially vetoed bills are returned to the respective branches of the legislature, what official method has the legislature to authorize their return to the Executive Office?

6. Does the concurrent resolution of the legislature, which provides: "That from and after twelve o'clock noon on Wednesday, April 19, 1911, the two Houses of the legislature *will transact no other business* than for the President of the Senate and the Speaker of the House of Representatives to sign enrolled bills for presentation to the Governor and the entry of the same on the Journal by the Secretary of the Senate and the Clerk of the House of Representatives, and the date of final adjournment of the legislature shall be on Tuesday, May 2, 1911, at twelve o'clock noon."

require the Governor to transmit his objections of bills to the House and Senate, accompanied by the vetoed bills or items thereof, or do the words of said resolution, "transact no other business" render this procedure unnecessary?

In answer to query number one, I believe the constitution clearly provides that if an act meet with the disapproval of the Governor he shall return it with his objections to the House in which it originated.

With respect to your second question I am of the opinion that if the Governor vetoes an item or several items of a bill he should return said bill to the House in which it originated. When a bill is vetoed it is returned to the Legislature for reconsideration. There would appear to be the same reasons for returning a bill, part of which is vetoed, as for returning a bill which is vetoed in its entirety.

Referring to your third question, it is my opinion that the constitutional ten-day limit on bills is not a limitation as to the time when the Governor shall file bills with the Secretary of State, except as indicated in the last clause of Section 36 Article V of the constitution which has no application in this instance owing to the fact that there were no bills passed during the last five days of the session.

Answering your fourth query, will say that bills received by the chief executive on April 19th, items of which are vetoed, must be returned to the House wherein they originated within ten days exclusive of Sundays, namely, on or before May 1st.

With reference to question number five, we have herein held that partially vetoed bills must be returned to the House in which they originated. The reasons for the Governor's action will be spread upon the Journal. If no further action is taken on such bills by the Legislature, it would seem proper for the clerk of the House or secretary of the Senate as the case may be, to officially return such bills to the Executive Office, accompanied by a message explaining that no action was taken by the Legislature, which message should be made a part of the official record of the House or Senate as the case may be. It is the duty of the Governor to file approved bills with the Secretary of

State. In order to afford him the opportunity to follow the same course with partially vetoed bills it will be necessary for such bills to be returned to him in the manner above outlined.

With regard to your last inquiry, will say that the constitution requires the Governor to return disapproved bills with his objections there-to to the House in which they originated. No concurrent resolution of the Legislature can make compliance with this requirement unnecessary.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.

TAXES. PRIVATE RAILROAD. Should be assessed under subdivision 16 of Section 8 of the General Tax Law.

April 28, 1911.

Mr. Wm. J. Gallagher, Supervisor, St. James, Michigan:

Dear Sir—Your letter of the 25th instant received and contents noted. In reply thereto would say that the private railroad owned by the Beaver Island Lumber Company should be assessed under subdivision 16 of Section 8 of the General Tax Law. The rolling stock should be assessed in the township where its principal office is located and its tracks should be assessed as personal property in the assessing districts or townships where they are laid.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

M-k-o.

TAXATION OF STATE BANKS. Where a private bank is organized as a State Bank prior to May 1, the shares of stock should be assessed under subdivision 8 of Section 8 of the General Tax Law as personal property. The change in the organization having taken place prior to May 1. the assessments should be made in accordance therewith.

April 28, 1911.

Mr. Roger Scott, Blanchard, Michigan:

Dear Sir—I am in receipt of your letter of the 26th instant in which you say that the Bank of Blanchard was organized as a State Bank on the 25th of April. You wish to know whether the same should be assessed as a private bank or as a State Bank.

In reply thereto would say that the shares of stock in such bank should be assessed under subdivision 8 of Section 8 of the General Tax Law as personal property. Its real property should be assessed against the bank the same as to an individual. I also call your attention to the third subdivision of Section 14 of the General Tax Law which designates where the shares of stock are to be assessed.

This change in the organization having taken place prior to May 1st you should make the assessment as the conditions exist at the present time.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

M-k-o.

CIRCUIT JUDGE. NOTIFICATION OF ELECTION. WITH WHOM OATH OF OFFICE SHOULD BE FILED. Board of State Canvassers notify circuit judge of his election. Oath of office of circuit judge to be filed with the Secretary of State.

April 28, 1911.

Mr. J. Leighton Bush, County Clerk, Adrian, Michigan:

Dear Sir—I have your communication of April 25th which reads as follows:

“Judge O’Mealey wished me to ask you if he received official notice from the Secretary of State’s office relative to his election as Circuit Judge of the 39th Judicial Circuit. Also as to when and with whom he should file his oath of office.”

In reply thereto would say a circuit judge is notified of his election by the board of State canvassers under authority of Section 3741 of the Compiled Laws of 1897.

Circuit judges are required to take and file the oath prescribed in Section 2 of Article XVI of the Constitution. This oath is filed with the Secretary of State within 20 days after receiving official notice of election or appointment, etc., under authority of Sections 150 and 151 of the Compiled Laws of 1897. The statute relative to the filing of the oath is not as clear as it might be but the universal practice throughout the State is, I understand, as above indicated.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

TOWNSHIPS: Act 136 Public Acts of 1907 does not make it mandatory upon townships to furnish metal markers for the graves of veterans of the Civil War.

April 28, 1911.

Mr. Geo. H. Pulver, Township Clerk, Dundee, Michigan:

Dear Sir—Your letter of the 24th instant received. Therein you say that the township board is in receipt of petition from some members of the G. A. R. of your township relative to furnishing William Bell Post No. 10 with metal grave markers pursuant to the provisions of Act No. 136 of the Public Acts of 1907. You state further that the graves of all the soldiers buried in your vicinity are marked by marble markers furnished by the United States Government. You ask if the act of 1907 compels the township to provide metal markers for graves which are already suitably marked by the National Government.

In reply will quote Sections 1 and 2 of Act No. 136 of the Public Acts of 1907.

“The common council, board of trustees or township board of every city, village or township in this State shall, upon the petition of any five reputable freeholders of any such city, village or township, procure for and furnish to said petitioners at the expense of such city, village or township, some suitable and appropriate metal marker for the grave

of each and every honorably discharged soldier, sailor or marine who served in the army of the United States and who is buried within the limits of said city, village or township or within the limits of any cemetery belonging to any such city, village or township, to be placed on the grave of such soldier, sailor or marine for the purpose of marking and designating said grave for memorial purposes.

Sec. 2. In all petitions to such common councils or boards, the petitioners shall set forth the names of all such soldiers, sailors and marines, whose graves have not been appropriately marked as contemplated in this act, and the number of such graves at the time of petitioning."

I believe that soldiers' graves marked by marble markers furnished by the United States Government are appropriately marked within the meaning of Section 2 above quoted and that the township is not required to furnish metal markers for such graves.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

CITIES. FRANCHISES. WOMEN TAXPAYERS. Women taxpayers have a right to vote upon the granting of a franchise by a city to a telephone company.

April 28, 1911.

Mr. W. T. Plowman, Secretary, Clinton Telephone Company, St. Johns, Michigan:

Dear Sir—Your letter of the 21st instant received. Therein you say that the Clinton Telephone Company has been granted a franchise by the common council of the city of St. Johns. The proposition is to be submitted to a vote of the electors at a special election to be held on May 8, 1911. You ask if women who pay taxes and have the qualification of male electors have the right to vote on this proposition.

In reply to your inquiry will quote Section 25 of Article VIII of the revised constitution of 1908 as follows:

"No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote."

I am, therefore, clearly of the opinion that women taxpayers who possess all the qualifications of male electors have the right to vote on the proposition of granting a franchise to the Clinton Telephone Company.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

SCHOOL LAW. PRIMARY MONEY. CONSTITUTIONAL LAW.

The amendment to Article 9 of Section 11 of the revised constitution relative to the distribution of primary money has no bearing on the May, 1911, apportionment.

April 28, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing, Michigan:

Dear Sir—Your letter of recent date received. Therein you refer to the recently adopted amendment to Section 9, Article XI of the constitution, providing that school districts which have enough money on hand at the close of the school year in July to pay their teachers' wages for a period of two years and the tuition of the eighth grade graduates for the same length of time, shall not be included in the apportionment of primary money until such time as the amount of primary money on hand shall not be sufficient for such purposes. You further say:

"Will you please give me your opinion as to whether the apportionment of primary money which is to be made in May, 1911, must be made under these conditions. I may say that at this time we have not the information at hand which would enable us to make the apportionment because we have no way of estimating what the amount of tuition would approximate, based upon the number of seventh and eighth grade pupils in each district. It would be impossible to make the apportionment by May 10 and secure this information, because we would have to send to every district in the State to get it and it would be weeks before the statistics could be compiled."

The amendment to said Section 9 of Article XI reads as follows:

"The legislature shall continue a system of primary schools, whereby every school district in the State shall provide for the education of its pupils without charge for tuition; and all instructions in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least five months in each year, or to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for the next ensuing two years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing two years, based upon the then enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing two years;"

I am of the opinion, after a careful consideration of the foregoing that said amendment has no bearing on the May, 1911, apportionment of primary money. The amendment expressly states that the school dis-

trict which shall on the second Monday in July of any year have on hand a sufficient amount of money to pay its teachers, etc., shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction. Therefore, it seems clear that the first apportionment to be affected by this amendment will be the November apportionment of the present year.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

OFFICERS. Term of office of certain state officers appointed by the Governor during the recess of the legislature.

April 28, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—In reply to your request as to the term of office of those persons who were appointed by your predecessor during the recess between the legislatures of 1909 and 1911 and whose appointments were confirmed by the Senate at the regular session of the legislature in 1911, I desire to say that in my opinion the following principles would govern in the determination of the question.

First; Where such appointments were for the full term under a statute providing that such appointments shall be made by and with the advice and consent of the Senate, the Senate had the right to act upon such appointments made during the recess of the legislature and to confirm or reject the same. In other words, the law would be interpreted as authorizing the governor during the recess of the legislature to make such appointments for the full term subject, however, to the consent of the Senate when convened. The Senate may, of course, reject the recess appointments by directly voting not to confirm the same or by confirming appointments made by the successor in office of the Governor making the recess appointments.

Where, therefore, the Senate confirms a recess appointment, the appointee is entitled to hold the office for the full term for which he was appointed. If the Senate rejects the recess appointment to an office and confirms the appointment thereafter made by the executive then in office, the appointee so confirmed is entitled to hold the office for the balance of the term.

Second; If the recess appointment is to fill a vacancy and the law under which the appointment is made prescribes how long such vacancy appointee shall hold the office, that law governs. For example, the act creating the Railroad Commission (Act 300 of the Public Acts of 1909) provides that when a vacancy occurs in the office of member of the commission, the Governor shall appoint a successor who shall hold office until the next session of the legislature, when an appointment should be made to fill such vacancy to be confirmed by the Senate. If the law under which the appointment is made contains no provision specifying the length of time the vacancy appointee shall hold the office, the general statutes relating to the supplying of vacancies (sections 1168-1171, C.

L. of 1897) apply and the appointee holds until the close of the next session of the legislature unless the Governor then in office appoints another person to fill the vacancy and such appointee is confirmed by the Senate.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

La-m-o.

TAXATION, of mortgages, etc. The assessment of mortgages under the General Tax Law as personal property credits not affected by the passage of Act 91 of the P. A. of 1911 for current year.

April 28, 1911.

Hon. Thaddeus B. Taylor, Cedar Springs, Michigan:

Dear Sir—Your letter of the 27th instant received and contents noted. In reply thereto would say that it is my opinion that the class of credits known as mortgages and land contracts are assessed for this year under the General Tax Law now in force and that Senate Bill No. 149, File No. 139 can have no application thereto.

Respectfully yours,
FRANZ C. KUHN,
Attorney General.

M-k-O

COUNTY ROAD COMMISSIONER: County road commissioners are required to pay for the expenses of an engineer for establishing a grade for road as provided in section 27 of Chapter 4, Act 283, Public Acts of 1909.

April 28, 1911.

Mr. James S. Parker, Prosecuting Attorney, Flint, Michigan:

Dear Sir—Your letter of the 22nd instant received. Therein you refer me to Section 27 of Chapter 4 of Act 283 of the Public Acts of 1909, and ask whether the board of county road commissioners or the township defrays the expense of hiring an engineer or surveyor to establish a grade for the roads provided for in said section.

Section 27, above referred to, reads as follows:

"In case any organized township shall decide to build a mile or more of State reward road as provided in section twenty-six of this act, the township board of such township shall file a written notice with the board of county road commissioners through the county clerk, on or before the first day of May in the year in which such road is to be built, stating that it is the intention of such township to build a certain piece or pieces of road, which shall be fully described in such notice, and thereupon the board of county road commissioners shall furnish an engineer or surveyor who shall establish a grade for such road or roads, and shall set grade stakes on each side of the road, not more than one hundred feet apart, to which the grades shall conform. Should a road which the township has decided to improve be a portion of one that the county road board is improving or proposed and intends to improve,

then such township shall build such piece of road of such material and of such width as will conform to the proposed plans of such county road board for such road."

It is my opinion that the word "furnish," as used in the above quoted statute, necessarily implies payment and that it is the duty of the board of county road commissioners to compensate the engineer or surveyor for work performed under the provisions of the above law.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

COUNTY DRAIN COMMISSIONER: Under Section 5, Chapter 9 of the drain laws the board of supervisors should audit and pay the personal and necessary expenses of the county drain commissioner out of the general fund of the county.

May 3, 1911.

Mr. William H. Andrews, Prosecuting Attorney, Benton Harbor, Michigan:

Dear Sir—Your letter of the 25th ult. received. Therein you say that at the April meeting of the board of supervisors of your county the county drain commissioner presented his bill for his salary and his personal expenses incurred in the performance of the duties of his office, and that said board of supervisors, against your advice, rejected his claim for personal expenses on the ground that the county was not liable therefore, but that these personal expenses were payable out of the various drain funds according to the provisions of Section 1 of Chapter 6 of the drain laws.

I believe that the personal necessary expenses of the county drain commissioner incurred while in the discharge of his official duties are a proper charge against and payable by the county under the provisions of Section 5 of Chapter 9 of the drain laws, which reads:

"Each county drain commissioner shall receive an annual salary to be paid as other county officers are paid, the amount thereof to be fixed by the board of supervisors at its regular October session in the year nineteen hundred nine, and every two years thereafter, in the same manner as the salaries of other county officers are fixed, and in addition thereto shall be allowed his actual necessary expenses incurred in the discharge of the duties of his said office by the board of supervisors, to be paid by the county, which shall be in full for all services rendered and expenses entailed in the performance of the duties of his office; such expense account shall be an itemized account, and verified by his oath taken before a proper officer."

Therefore I believe that you advised the board of supervisors correctly and that they acted improperly in declining to pay said expenses.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O

MORTGAGE TAX LAW. Mortgages recorded prior to January 1st, 1912, may come under the new mortgage tax law by the filing of the affidavit required by the statute.

May 3, 1911.

Mr. S. S. Edgar, Lakeview, Michigan :

Dear Sir—Your letter of the 29th ult. received. Therein you ask for an interpretation of Section 6 of the new mortgage tax law, being Senate Enrolled Bill No. 42.

In reply will say that the owner of any mortgage which is on file August 2d, 1911, the date on which this act takes effect, or which may be recorded thereafter and before January 1st, 1912, may present to the county treasurer of the county in which said mortgaged property is situated at any time on or after August 2, 1911, an affidavit, which affidavit shall set forth the mortgage, place of record thereof and the amount of principal secured thereby which is unpaid, and said owner may thereupon pay a tax of one-half of one per cent upon such unpaid amount, and thereafter said mortgage for the purpose of taxation shall be considered the same as other mortgages provided for in this Act, viz., those recorded after January 1st, 1912. If however, the registry fee provided for in this act shall not be paid on mortgages which are given prior to January 1st, 1912, then and in that case such mortgages shall remain under the present ad valorem system of taxation and shall be assessed and taxed under the present law.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O

MOTOR VEHICLE LAW. The vendee of an automobile is not entitled to run his machine without having a number thereon in compliance with the provisions of the Motor Vehicle Law.

May 4, 1911.

Mr. Newel Smith, Justice of the Peace, St. Louis, Michigan :

Dear Sir—We are in receipt of your letter of April 27th, relative to subdivision 7 of Section 2 of Act 318 of the Public Acts of 1909. In reply thereto will say that neither subdivision 7 of Section 2 or any other provision of the Motor Vehicle Law authorizes dealers or any other persons to run ten days before getting a number plate. This subdivision simply gives the vendor of the machine ten days in which to apply for the transfer of the number, otherwise the vendee may have the number transferred to him. The vendee of an automobile is not entitled to run his machine for any length of time on the streets and highways without having a number thereon, in accordance with the provisions of the act.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

CIRCUIT COURT COMMISSIONERS. WITNESSES. In proceedings before Circuit Court Commissioners involving proceedings pending in the Circuit Court, witnesses are entitled to the same fees as for attending in Courts of Record.

In summary proceedings and proceedings for forcible entry and detainer, witnesses are entitled to same fees provided for in proceedings before justices of the peace.

May 4, 1911.

Mr. Fred G. Stanley, Attorney-At-Law, Kalamazoo, Michigan:

Dear Sir—Replying to your letter of April 27th, relative to witness fees in proceedings before Circuit Court Commissioners, will say that Section 11221, Compiled Laws of 1897, in our judgment would govern in all cases involving proceedings pending in the Circuit Court. This section provides that witness fees shall be “for attending any suit or proceeding *pending* in a court of record, one dollar for each day and fifty cents for each one-half day * * * for traveling at the rate of ten cents per mile in coming to the place of attendance to be estimated from the residence of such witness, if within this state, or from the boundary line of this state which such witness passed in coming, if his residence be out of the state.”

In proceedings for forcible entry and detainer and summary proceedings instituted before a Circuit Court Commissioner, your attention is called to Section 11159 and 11162 of the Compiled Laws, which seem to indicate that proceedings of this character shall be governed as nearly as possible by the laws governing justices of the peace and for this reason we are inclined to the view that the statutes governing fees of witnesses before justices of the peace are applicable to proceedings under this chapter of the Compiled Laws before Circuit Court Commissioners.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

INSURANCE. A Mutual Fire Insurance Company may amend its articles before commencing business to exclude a county in the original articles and include another county.

May 4, 1911.

Mr. M. M. Dardas, Attorney-At-Law, Bay City, Michigan:

Dear Sir—Replying to your letter, in which you inquire whether the Koscuiskoz Mutual Fire Insurance Company, authorized to do business in the counties of Bay, Saginaw and Huron, which was recently organized and has not as yet done any business in Saginaw county, may amend its articles so as to include Arenac county and exclude Saginaw county, will say that it is the opinion of this department that under the facts stated in your letter, such amendment is permissible. The proceedings for making such amendment would be the same as for amending the articles of association in other respects, as laid down in Section 7295 of the Compiled Laws of 1897.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

FIRE MARSHAL LAW. Act 79 of the P. A. of 1911, authorizes an expenditure of but \$10,000 for two years.

Clerical help may be included as an expense item and presented to the Board of State Auditors for allowance under the provisions of the act.

The provisions of the Graded Salary Law do not apply to the State Fire Marshal Department.

May 4, 1911.

Hon. C. A. Palmer, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—We have considered the inquiries submitted by you, relative to House Enrolled Act No. 51, entitled:

"An act for the prevention of fire waste, and the creation of the office and appointment of a state fire marshal, for the appointment of his assistant, to prescribe the duties, powers and authority of each, to fix the salaries for the same and to provide for salaries and necessary expenses."

The questions raised are as follows:

First; Does the act authorize an *annual* expenditure of ten thousand dollars in carrying out its purposes?

Second; Does the act authorize a state fire marshal to appoint clerks to carry out its provisions?

Third; If clerical help may be employed, would the compensation of such help be governed by the graded salary law?

The provisions of this act, so far as material to the questions involved are as follows:

"Sec. 11. * * * * * The assistant fire marshal appointed under the provisions of section two of this act shall receive an annual salary of two thousand dollars. The state fire marshal may incur such other expense as may be necessary in the performance of the duties of the office.

Sec. 12. The state fire marshal shall submit annually to the governor, as early as consistent with full and accurate preparation and not later than the first day of April, a detailed report of his official action under this act, and it shall be embodied in his annual report to the legislature.

Sec. 13. The salary of the assistant fire marshal and the other expenses which may be incurred under the provisions of this act *shall not exceed the sum of ten thousand dollars* and shall be paid by the state treasurer from the funds received from the commissioner of insurance for retaliatory fees imposed by act number one hundred ninety-nine of the Public Acts of nineteen hundred seven, as allowed by the board of state auditors."

In considering the first question, it will be noted that under Section 13 it is provided that the salary and other expenses which may be incurred shall not exceed the sum of ten thousand dollars. There is nothing contained in this section which indicates in any manner that the amount of ten thousand dollars is to be made available annually. Neither is there any language in the other sections of the act which indicate that an annual appropriation of ten thousand dollars is to be made available for the purposes of the act. It is a cardinal rule of statutory construction that extrinsic matters will not be examined to ascertain the intent of the legislature if it can be determined from the language used. There is nothing ambiguous in the language of Section 13

and it is our judgment that the situation is analogous to that passed on in the case of People vs. Crucible Steel Company, 150 Mich. 563, where the Court used the following language:

"An inspection of Act 310 shows that its verbiage is not ambiguous. Upon its face it is full and complete. It is not for us to say the legislature intended the penalties provided in section five to apply to any and all violations of the provisions of the act when the language is: 'Every corporation subject to the provisions of this section, which shall neglect or fail to comply with its requirements, shall be subject to a penalty,' etc. We cannot assume the legislature made a mistake and used one word when it intended in fact to use another. The language of the statute is plain as it reads and we do not feel authorized to change its meaning by substituting another word for the one the legislature used."

We are constrained to hold, in view of the above decision, that this act does not authorize an annual expenditure of ten thousand dollars.

In answer to the second inquiry will say that it is our view that the employment of clerical help to carry out the purposes of the act is authorized under the language of section eleven providing that:

"The state fire marshal may incur such other expense as may be necessary in the performance of the duties of the office."

It is our opinion, however, that such clerical help as is employed should be included as an expense item and presented to the board of state auditors for allowance the same as traveling and other expenses.

We do not think the graded salary law applies for the reason that the act in question creates a new department in which the compensation of clerical help has not "heretofore been limited to one thousand dollars per annum for each clerk" and for the further reason that clerical hire, if allowed at all, must be allowed as an item of expense and paid through the board of state auditors.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

EQUALIZATION. Legislature of 1911 passed an act requiring an equalization of property by the board of supervisors on the fourth Monday in June, 1911.

May 11, 1911.

Mr. William H. Yearnd, Prosecuting Attorney, Cadillac, Michigan:

Dear Sir—Your letter of the 6th instant received. Therein you inquire whether the legislature at its recent session provided for a meeting of the boards of supervisors in June to review the assessments.

In reply will say that Section 5 of House Enrolled Act No. 19, entitled:

"An act to create a state board of equalization; to prescribe its powers and duties; to provide that said board shall be furnished with certain information by the several boards of supervisors and by the board of state tax commissioners; to provide for meeting the expense authorized by this act, and to repeal all acts or parts of acts contravening the provisions of this act."

provides that the boards of supervisors of each county shall hold a meet-

ing on the fourth Monday in June, 1911, and on the fourth Monday in June of every consecutive third and fifth year thereafter for the purpose of equalizing the assessment rolls in the manner provided by law, etc.

I am enclosing copy of said House Enrolled Act No. 19.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-m-encl.

LIQUOR LAW. In determining whether a saloon is within the prohibited distance from a church or school house, the measurement should be made along the center line of the street from the front entrance of one building to the front entrance of the other.

The prohibition of the statute applies notwithstanding the school house or church may be upon one street and the saloon upon another street.

May 11, 1911.

Hon. Philip T. Van Zile, Prosecuting Attorney, Detroit, Michigan:

Dear Sir— Your letter of April 15th enclosing letter from the Secretary of the Common Council Committees of the City of Detroit, requesting an interpretation of the General Liquor Law, as amended by Act 291 of the Public Acts of 1909, duly received.

For reply thereto will say that under the provisions of Section 37 of said act the distance between a schoolhouse and a saloon is required to be measured along the street line from the front entrance of one to the front entrance of the other. This Department has construed the provision requiring measurement along the street line to mean along the center line of the street. It is also the view of this Department that the prohibition of the statute applies notwithstanding the school house may be upon one street and the saloon upon another street. It does not appear from the map enclosed with your communication whether or not the distance between the schoolhouse and the saloon as thus measured, either by way of Third Street or Second Avenue, is more or less than four hundred feet. If the distance between the school house and the saloon measured as herein indicated, is more than four hundred feet, the establishment of a saloon at the proposed location would not be a violation of Section 37 of said act; if the distance is four hundred feet or less as thus measured, the establishment of the saloon would be prohibited.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-k-O

LOCAL OPTION LAW. When a county after the local option law has been adopted votes to return to the license system, the establishment of saloons within four hundred feet of a church or school house, where such saloons had been maintained prior to the adoption of the local option law, is prohibited.

May 11, 1911.

Mr. James S. Parker, Prosecuting Attorney, Flint, Michigan:

Dear Sir—I am in receipt of your letter of May 9th. You state that prior to the adoption of the local option law in Genesee county May 1st, 1909, certain saloons were located within four hundred feet of churches. That the county has voted to return to the license system and the question is asked whether or not the establishment of saloons at these locations is prohibited by the terms of the General Liquor Law, as added by Act 291, Public Acts of 1909.

For reply thereto would say that said Section 37 provides, in part, that:

“No license shall be issued to anyone to open up and establish a new bar or saloon having its front entrance within four hundred feet along the street line from the front entrance of a church or public school house,” etc.

That section also contains this proviso:

“Provided, That none of the provisions of this section shall apply to any bar or saloon established and existing at the time this act takes effect.”

Act 291, Public Acts of 1909, was not given immediate effect and did not become operative until about September 1st, 1909. At the time this act became operative, therefore, there were no bars or saloons established and existing in Genesee county within the prohibited distance from churches and schoolhouses.

It seems entirely clear from these provisions of the statute that the prohibition of Section 37 applies to the establishment of saloons within the prohibited distance from churches within Genesee county. The location of a saloon at the old places of business which were within four hundred feet of churches would in my opinion, constitute the establishment of new bars or saloons within the meaning of said act.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-O

SCHOOL LAW. TUITION. Taxes paid by an individual in a high school district may be credited on tuition paid by primary district to such high school under Act 65, Public Acts of 1909.

May 11, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—Your letter of May 3d is received, wherein you say:

“Will you please give me your opinion as to whether taxes paid by an individual in a high school district can be credited on tuition paid by a primary district to such high school district under Act 65 of 1909 in case

such individual makes application to have the district pay the tuition of his child to such high school?"

In answer thereto will say that I am of the opinion that taxes paid by an individual in a high school district can be credited on tuition paid by a primary district to such high school under the provisions of Act No. 65 of the Public Acts of 1909.

The second subdivision of Section 122 of the pamphlet of General School Laws reads:

"It shall be the duty of the board of education in any graded school district: * * * * *

Second, To establish in such district a high school, when directed by a vote of the district at any annual or special meeting, and to determine the qualifications for admission to such high school and the fees to be paid for tuition by non-resident students: Provided, That when non-resident students, their parents or legal guardians shall pay a school tax in said district, the same shall be credited on their tuition a sum not to exceed the amount of such tuition, and they shall only be required to pay tuition for the difference between the amount of the tax and the amount charged for tuition."

Therefore when students themselves, or their parents or guardians pay their tuition to a high school, any school tax which such students, their parents or guardians, may pay to the district maintaining said high school, is credited on the amount of their tuition. There would appear to be the same reasons for allowing such tax to be credited on the amount of tuition when a school district pays it as when the students themselves or those in loco parentis pay it. And that reason I assume to be the impropriety of collecting two distinct taxes to defray the expense of the same transaction.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O

TEACHER'S CERTIFICATE. BREAKING OF CONTRACT. A teacher's certificate may not be annulled because the teacher breaks his contract.

May 11, 1911.

Mr. John E. Wallace, Port Austin, Michigan:

Dear Sir—I have your communication of May 10th, together with enclosures, relative to one Clarence L. Austin, who according to your communication violated the terms of his contract to teach in your school. I understand that you wish to be advised as to whether this action upon Mr. Austin's part would warrant the annulment of his teacher's certificate.

In reply thereto will say I cannot find that the breaking of a contract is cause for the annulment of a certificate. Your only remedy is an action in damages against Mr. Austin for violating the terms of his contract.

The enclosures are herewith returned.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

L-m-o.

INSURANCE. The Insurance Commissioner is not entitled to collect a fee for the service of process upon a Michigan surety company under Act 321 of the P. A. of 1907.

May 11, 1911.

Hon. C. A. Palmer, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of the 3d instant, in which you inquire whether a three dollar fee should be collected by you in the case of service of process made upon the Commissioner of Insurance in actions brought against a Michigan surety company.

In reply thereto will say that Act 266 of the Public Acts of 1895, as amended by Act 321 of the Public Acts of 1907, relative to surety companies, provides that:

“Service shall be made in such cases upon the Commissioner of Insurance in like manner as is provided for the service of process upon societies, orders or associations organized under the laws of any other state, province or territory and doing business in this State and not having its principal office within this State.”

An examination of Act 174 of the Public Acts of 1885, Sections 10429 et seq. of the Compiled Laws, entitled:

“An act to provide for bringing suits against co-operative and mutual benefit insurance societies and associations organized under the laws of other states or territory and doing business in this state”

seems to indicate that the reference made in Act 321 of the Public Acts of 1907 is to Act 174, above mentioned. Section 7745 of the Compiled Laws applies particularly to fraternal beneficiary societies and is a part of the fraternal beneficiary law. The language used in Act 321 is substantially identical with that contained in the title to Act 174 of the Public Acts of 1885.

It is, therefore, our opinion that you are not entitled to collect a fee for the service of process upon a Michigan surety company, pursuant to the provisions of Act 321 of the Public Acts of 1907.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

MORTGAGE TAX LAW. The owner of a mortgage may take advantage of the provisions of the mortgage tax law any time prior to January 1st, 1912, on mortgages now recorded.

May 11, 1911.

Mr. A. E. Fowler, Sumner, Michigan:

Dear Sir—Your letter of the 5th inst. received. Therein you ask when the new mortgage tax law takes effect; also in what way a person who has mortgages now on record can take advantage of the new law.

In answer will say that according to rule the new mortgage tax law, being Senate Enrolled Act No. 42, will take effect 90 days after the final adjournment of the Legislature which will be August 2, 1911. However, its provisions will not begin to operate until on and after January 1st, 1912.

The owner of any mortgage which is on file August 2d, 1911, may present to the county treasurer of the county in which the mortgaged property is situated at any time on or after August 2d, 1911, an affidavit, which affidavit shall set forth the mortgage, place of record thereof and the amount of principal secured thereby which is unpaid and said owner may thereupon pay a tax of one-half of one per cent upon such unpaid amount and on and after January 1st, 1912, said mortgage for the purpose of taxation shall be considered the same as other mortgages provided for in the new act, viz., those recorded after January 1st, 1912.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O.

SCHOOL LAW. Act 176 of the Public Acts of 1891, as amended, controls in the Upper Peninsula. In all matters not covered by this act the general school laws govern.

WOMEN VOTERS. Women may vote at school meetings in township districts of the Upper Peninsula.

May 11, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing:

Dear Sir—Your letter of May 3d received. Therein you say:

“Act 176 of the laws of 1891, as amended in 1903, provides for a system of township school districts in the upper peninsula of Michigan. Is this a general or a special law? Do provisions of the general law enacted since 1903, repeal the provisions of Act 176 of 1891 when such later provisions are at variance with the provisions of the upper peninsula law? To illustrate: Compiler's section 222 on page 112 of the General School Laws of 1909, the same being section 4831 of the Compiled Laws of 1897, provides that at each annual meeting held in said township the qualified voters present shall determine the amount of money to be raised by tax for all school purposes for the ensuing year. Section 9 of House Enrolled Act No. 36 of 1911, provides that the district board shall have authority to vote such taxes as may be necessary for the regular running expenses of the school which shall include school furnishings and all appurtenances, care of school property, teachers' wages, water supply, premium upon indemnity bond for the treasurer of the district, transportation of pupils, record books and blanks and all apparatus and material which may be necessary in order that the schools may be properly managed and maintained, and for deficiencies in such funds for the preceding year, if any and for services of district officers. This latter provision does not go into effect until August 1, 1911, but after it goes into effect who shall levy such taxes as are referred to in the above in the township districts of the upper peninsula?”

“In general, will amendments to the General School Laws passed since 1903, if such amendments are inconsistent with the provisions of Act 176, govern, or do the provisions of Act 176 govern in township unit districts?”

In reply will say that in so far as the application of the General School Laws of this state are concerned, Act No. 176 of 1891, being, “An act for the organization of township school districts in the Upper Penin-

sula," would probably be considered a special act. This being the case, all the provisions of said Act No. 176 which conflict with the general laws of this state, would be controlling as far as the Upper Peninsula is concerned. In all matters not covered by said Act 176 the General School Laws of the state would govern.

You ask this further question:

"May women vote at school meetings in the township districts of the upper peninsula? Section 2 of said Act 176 of 1891 provides that on the second Monday of July following the action of the township board as stated in section 1 of this act the qualified voters of the township shall proceed to elect from their number by ballot, etc. Further in the section occurs the following language: 'The qualifications of voters and the conditions of eligibility for office holding shall be the same as provided in the General School Laws.'"

It is my view that women may vote at school meetings in the township districts of the upper peninsula. The general School Laws provide that:

"In all school elections every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes, or who is the parent or legal guardian of any child of school age included within the school census of said district, and who has resided in said district three months next preceding such election shall be a qualified voter. On the question of voting school taxes, every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district, and who has resided in the district, as above stated, shall be a qualified voter," etc.

Section 2 of said Act No. 176, as amended makes express reference to the qualifications required by the general school laws and by such reference incorporates said qualifications into the upper peninsula school law.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O.

COUNTY DRAIN COMMISSIONER. DRAINS. Petition for a drain need not contain any specification as to the width of the drain or the size of the tile. County commissioner may require certified check of bidders as a guarantee of performance of contract for the construction of a drain.

May 11, 1911.

Mr. Arthur J. Butler, Prosecuting Attorney, Big Rapids, Michigan:

Dear Sir—Your letter of the 24th ultimo received. Therein you ask my opinion upon a question relating to the powers of the county drain commissioner in constructing a county drain. You say further:

"I have advised the commissioner but as it is a question involving a great outlay of money and one that the statute does not plainly define the duties of the commissioner thereto, I would like to make sure that I am right.

The drain in question is something over two miles in length and fol-

lows for some distance the highway, thence through an unincorporated village and thence within the right of way of the Pere Marquette railway to an open field. It is necessary to tile and enclose the ditch along the highway, through the village and within the right of way of the railway. The petition filed with the commissioner and which gives him jurisdiction specifies thirty-six inch tile. The commissioner has had an expert go over the ground and make estimates and find that a twenty-four inch tile is sufficient to carry the water and that such a reduction in the size of the tile would save several hundred dollars. Now, the point is has the commissioner the power to contract for a different size tile than those specified in the petition?"

After a careful examination of the drain laws, I am of the opinion that the initiatory petition or application for a drain, which is filed with the drain commissioner, should not contain any specification as to the width of the proposed drain or the size of the tile to be used. Such specifications, when inserted in said petition or application, should be treated as surplusage. Therefore, since thirty-six inch tile was specified without authorization and the twenty-four inch tile is deemed sufficient by the commissioner for the purposes for which the drain is intended, I believe it would be proper for said commissioner in his order of determination to specify and direct the use of said twenty-four inch tile.

With reference to your question regarding the right of the commissioner to require of bidders a certified check as a guarantee for the performance of the contracts, I will direct your attention to the case of *Brady v. Hayward*, 114 Mich. 326, in which it was held that the deposit of a certified check was a proper requirement in order to guard against the acceptance of contracts by irresponsible bidders.

Your respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-m-o.

TAX LAW. Taxation of mortgages, after the taking effect of the new mortgage tax law, Act 91, P. A. 1911.

May 11, 1911.

Mr. William B. Hatch, Counselor-at-Law, Ypsilanti, Mich.:

Dear Sir—Your letter of May 6th received. Therein you ask for my interpretation of section six of the new mortgage tax law, being Act No. 91, P. A. 1911.

In reply will say that the owner of any mortgage which is on file August 1, 1911, or which may be recorded thereafter and before January 1, 1912, may present to the county treasurer of the county in which said mortgaged property is situated at any time on or after August 1, 1911, an affidavit, which affidavit shall set forth the mortgage, the place of record thereof and the amount of principal secured thereby which is unpaid and said owner may thereupon pay a tax of one-half of one per cent upon such unpaid amount, and after January 1, 1912, such mortgage for the purpose of taxation shall be considered the same as other mortgages provided for in said act, namely, those recorded after January 1, 1912. The registry tax of one-half of one per cent shall not be in lieu of the 1911 mortgage tax. If the registry tax provided for in said

act shall not be paid on mortgages which are given prior to January 1, 1912, then and in that case such mortgages shall remain under the present ad valorem system of taxation and shall be assessed and taxed under the present law.

I will add, in conclusion, that this act can have no application to assessments for the year 1911.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-m-o

SLOT MACHINES. Machines giving value received are not gambling devices. Machines giving at intervals more than value received are gambling devices. Machines giving prizes are gambling devices. Selling chances on prizes is a lottery and in violation of law.

May 11, 1911.

Mr. Louis H. Fead, Prosecuting Attorney, Newberry, Michigan:

Dear Sir—Your letter of the 29th ultimo received. Therein you say:

"There are several slot machines running in this vicinity upon the legality of which I would like your opinion. I have been unable to find any decisions of our courts upon them and there are some regarding which I am doubtful, others I am convinced are illegal. However, I want to make a clean-up on them and therefore want to be sure about all of them.

1. Machines which give value received, and nothing more, as for instance, the gum machines.

2. Machines which give value received every time and occasionally give twice or three times value received (as for instance, cigar machines in which a nickel is deposited and which give the choice of any nickel cigar every time and occasionally call for two or three cigars). These machines are usually considered merely to increase sales.

3. Machines where gum is given with each deposit. The gum does not come out of the machines but is placed in a case alongside and the person who plays the machine may take the gum or not as he pleases. If the machine turns up certain numbers, the player gets a certain number of cigars, or in one case, certain sums of money. And for the highest number during the week, the player who makes it, is given a cash or some other kind of a prize."

In reply will say that machines which give value received, and nothing more, such as gum machines, are not in my opinion gambling devices. With regard to the machines described in paragraphs numbered 2 and 3 of your letter, I am inclined to believe under the decisions herein cited, that they fall within the definition of gambling devices, since an element of chance enters into their operation.

Garland Novelty Co. vs. State, 71 S. W. 257;
Wagner vs. Upshur, 52 Atl. 509;
State vs. Woodman, 26 Mont. 348;
Lyman vs. Kurtz, 166 N. Y. 274;
State vs. Howell, 83 Mo. App. 198;
Same vs. Kuntz, Id. 631;

Christopher vs. State, 53 S. W. 852;
Kolshorn vs. State, 23 S. E. 829;
Stearns Case, 21 Tex. 693;
Cullinan vs. Hosmer, 100 N. Y. App. Div. 148;
Heeman vs. State of Ohio, 9 Ohio Dec. (Sup. Com. Pleas)
274;
Lang vs. Merwin, 99 Me. 486.

In paragraph numbered four in your letter, you request my opinion:
"In regard to selling chances on prizes, such as boxes of cigars, or candy. In this kind of a game, the party buys a number receiving nothing for his money, except in case he holds the lucky number."

This proposition would seem to come fairly within the definition of a lottery, as defined by Bishop in his work on Statutory Crimes, paragraph 952 as follows:

"A lottery may be defined to be any scheme whereby one on paying money or other valuable thing to another, becomes entitled to receive from him such a return in value, or nothing as some formula of chance may determine."

The following decisions with notes attached may be of value to you in connection with the matters which you submit:

People vs. McPhee, 139 Mich. 687;
State vs. Elliott, 3 L. R. A. 403;
Yellowstone Kit vs. Alabama, 7 L. R. A. 599;
Louisiana vs. Boneil, 10 L. R. A. 60.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-O.

BRIDGES. Under the state of facts given, held that township of Deerfield should pay the cost of building a bridge on the town line between the township of Deerfield and Ridgeway in Lenawee county.

May 11, 1911.

Mr. Earl C. Michener, Prosecuting Attorney, Adrian, Michigan:

Dear Sir—Your letter of the 29th ult. received. Therein you say: "In this county the township of Ridgeway borders on the northeast corner of the township of Deerfield and the town line road has been allotted to each township in proper portion for many years, and the question now arises which township should rebuild a certain bridge."

You proceed at some length to describe the situation and enclose a diagram showing the boundary line between the townships, the township line road, and the portions thereof taken care of by each township, etc. You wish to know which township, Deerfield or Ridgeway, should rebuild the bridge situated at the letter B on the diagram, said bridge being at the intersection of the east and west and the north and south roads.

Basing my opinion on the accuracy of your diagram, I believe that the township of Deerfield should pay the cost of rebuilding said bridge. I understand that that portion of the north and south road comprised between the letters P and M on the chart, since it lies wholly within

the township of Ridgeway, has always been repaired by said township. I am given to understand further that by agreement the township of Deerfield has always taken care of that portion of the north and south road embraced within the letters A and L on the diagram. You state further that that portion of the east and west road between the line XO and the westerly terminus of said road has been allotted to Deerfield township to be kept in repair and has always been so kept in repair by said township. Therefore the portion of east and west road within which the proposed bridge is to be built lies within that part of said road which Deerfield township is bound to keep in repair and I believe that if said bridge is rebuilt it should be done at the expense of Deerfield township.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

INSURANCE. A casualty company has no right to attach a rider to its accident policies giving the assured the option of waiving the specific benefits in the policy and receiving the services of an attorney to prosecute an action for personal injuries against the party responsible for the injuries.

May 11, 1911.

Hon. C. A. Palmer, Commissioner of Insurance, Capitol, Lansing:

Dear Sir—We have considered your letter of April 25th, in which you submit a tentative draft of a rider which a casualty company organized under Act 187, Public Acts of 1887, proposes to attach to accident policies, and inquire whether such a rider may legally be used. .

The proposed rider gives the insured the option in case of injury or death due to actionable negligence of some responsible agency, of waiving specific benefits of the policy which would be due him and in lieu thereof receiving the services of an attorney to prosecute the action for negligent injury including the furnishing of bonds and advanced court costs except witness fees.

The provisions of the statute so far as they affect the question under consideration are contained in Section 1, as amended by Act 67, Public Acts of 1899, authorizing companies organized under the act to provide, "to members indemnity for disability or death by accident." Also Section 15 of the Act, Section 7511 Compiled Laws, providing as follows:

"Every policy or certificate hereafter issued by any corporation organized in this state and doing business under this act and promising a payment to be made upon a contingency of death or disability by accident shall specify the sum of money it promises to pay upon each contingency insured against and the number of days after the satisfactory proof of the happening of such contingency at which such payment shall be made; and upon the occurrence of such contingency unless the contract shall have been voided by fraud or by breach of its conditions, the corporation shall be obligated to the beneficiary for such payment at the time and to the amount specified in the policy or certificate; and this indebtedness shall have priority over all indebtedness thereafter in-

curred, except as hereinafter provided in case of the distribution of assets of an insolvent corporation."

The first question which arises is whether the proposed provision in fact provides for an indemnity within the meaning of Section 1. In *Vredenburg v. Physicians Defense Company*, 126 Illinois Appeals, 509, the Physicians Defense Company in consideration of a premium agreed to defend against all civil suits for damages for malpractice based on services rendered during the term of the agreement. After discussing the various definitions of insurance and concluding that it was a contract of indemnity which it is defined to be in the statute here in question, the court said:

"The contract in controversy does not fall within the foregoing definitions. By it appellee undertakes at its own cost and expense to defend the other party to the agreement against suits of a specified character brought within a specified time in consideration of a fixed payment which may be deemed as in the nature of a retainer such as an attorney may lawfully receive from a client. The company does not undertake to indemnify the holder of its agreement against a judgment or to pay such judgment nor any part of it, not even the costs of suit. It is true that in making defense it may have to pay out more than the sum it receives. So also an attorney who may agree with the client to defend a suit for an agreed compensation may find himself compelled to expend time and labor worth more than he has agreed to charge and receive. The contract has no element so far as we can discover of indemnity. Appellee does not insure the holder against suits for malpractice. It merely makes a business of defending against them when they are brought, provides legal services for its patrons and we perceive no reason why it should be compelled to comply with the requirements of the statutes referred to relating only to insurance companies."

This case was discussed in the case of *Physicians Defense Co. v. O'Brien*, 111 Northwestern 396, and a majority of the court refused to follow the Illinois decision. There is a strong minority opinion sustaining the above ruling. The case of *Physicians Defense Company v. Laylin*, 73 Ohio State 90, while turning upon the question of the right of a corporation to engage in professional business, involves a contract of a character identical with the ones involved in the cases above cited. This Department, while not having given a written opinion upon the subject, has been inclined to adhere to the rule laid down in the Illinois case and the Physicians Defense Company is now admitted to do business in this State under the general corporation laws.

It seems to us that the purpose of the Physicians Defense Company is analagous to the purpose which is proposed to be accomplished by attaching the proposed rider in the case under discussion. But should the courts hold that a contract such as the one under discussion is a contract of indemnity, we would still be obliged to hold that it could not be made a part of an insurance contract under the provisions of Act 187. Section 15 above quoted requires the contract to "specify the sum of money it promises to pay upon each contingency insured against and the number of days after the satisfactory proof of the happening of such contingency at which such payment shall be made." It is manifest that the proposed rider does not comply with this requirement and we do not see how it would be possible to devise a rider which would comply

with this requirement of the statute and at the same time cover the situation which is endeavored to be reached.

We are therefore constrained to hold that a rider of the character submitted in this communication cannot be attached to a policy issued by a casualty company under Act 187, Public Acts of 1887.

Very respectfully,

FRANZ C. KUHN,

Attorney General.

Hi-k-O.

TOWNSHIPS. MEMORIAL DAY. Township board may lawfully limit the amount which it will expend for memorial day to a sum less than \$50.

May 17, 1911.

Mr. Henry Runyan, Adjutant, Kilbourn Post No. 361, Sherwood, Michigan:

Dear Sir—Your letter of the 15th instant received. Therein you inquire whether the township board has the right to limit the amount of money which may be expended in the observation of Memorial or Decoration Day.

In reply will refer you to Act 110 of the Public Acts of 1905, which provides as follows:

"It shall be lawful for the township board of any township, the board of trustees of any village or the common council of any city in this State, to appropriate money for the purpose of defraying the expenses of the proper observance of Memorial or Decoration Day: Provided, That the amount expended in any one year under the provisions of this act shall be limited as follows: In any township, city or village having a population of less than five thousand inhabitants, a sum not exceeding fifty dollars; in any village containing not less than five thousand inhabitants, a sum not exceeding one hundred dollars; in any village or city containing not less than ten thousand inhabitants, a sum not exceeding one hundred twenty-five dollars, and in any village or city containing not less than twenty thousand inhabitants, a sum not exceeding one hundred fifty dollars. The sums hereby authorized to be appropriated shall be assessed, levied and collected in the same manner as other expenses of such township, village or city are assessed, levied and collected."

Therefore, if your township has a population of less than five thousand inhabitants, the township board can allow any amount of money for the purposes above specified not to exceed fifty dollars. The township board can lawfully use its discretion up to the amount of fifty dollars and shall direct the manner and extent of such celebration.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

OFFICERS. Officers appointed by the Governor during a recess of the legislature, under laws providing that such appointment shall be made for the full term by and with the advice and consent of the Senate, are entitled, after confirmation by the Senate, to hold office for the full term.

If the Senate rejects the recess appointments and confirms the appointments of the executive then in office, the appointees are entitled to hold office for the balance of the term.

Where a recess appointment is to fill a vacancy and the act under which the appointment is made prescribes how long the appointee shall hold the office, that law governs.

If the law under which such appointment is made does not specify the term of such vacancy appointee, the general statute as to supplying vacancies applies and the appointee holds until the next session of the legislature, unless the Governor then in office appoints another person to fill the vacancy and such appointment is confirmed by the senate.

May 17, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of May 10th requesting an opinion as to the term of office of each of those persons appointed by your predecessor during the recess between the Legislatures of 1909 and 1911, and in reply submit the following:

1.

Richard H. Fletcher, of Bay City, Bay county, appointed June 25, 1909, as Commissioner of Labor, for a term of two years from and after July 1, 1909.

This appointment was made under authority of Section 1 of Act 285, Public Acts of 1909. Under the provisions of this section the appointee upon confirmation by the Senate, is entitled to hold the office for the term of two years after the appointment. Mr. Fletcher's term of office as commissioner of labor therefore expires July, 1, 1911.

2.

Horace Kitchell, of Coldwater, Branch county, appointed July 7, 1909, as a Member of the Board of Control of the Home for the Feeble-Minded and Epileptic, to fill vacancy caused by the resignation of Orson A. Ball, for the term ending January 31, 1915.

This appointment was made under authority of Section 2 of Act 101, Public Acts of 1909. Under the provisions of this section the appointee holds only until the close of the session of the Legislature of 1911, unless he is re-appointed, in which event he would hold for the balance of the term ending January 31, 1915.

3.

Frederick Klump, of Cass City, Tuscola county, appointed July 15, 1909, member of the State Court of Mediation and Arbitration, for the term of three years from and after May 26, 1909.

The statute under which this appointment was made was repealed by the Legislature of 1911 and the office is therefore abolished.

4.

Elliott F. Graybill, of Greenville, Montcalm county, appointed August 11, 1909, as a member of the Board of Managers of the Michigan Soldiers' Home, to fill vacancy caused by the resignation of Townsend A. Ely, for the term ending February 28, 1913.

This appointment was made under the provisions of Section 2056, Compiled Laws of 1897. The appointee in this case is entitled to hold the office only until the close of the Legislature in 1911, unless he is re-appointed, in which event he is entitled to hold the office for the balance of the term ending February 28, 1913.

5.

George W. Dickinson, of Pontiac, Oakland county, appointed September 1, 1909, as member of the Michigan Railroad Commission, for the term ending January 15, 1913.

This appointment is made under authority of Section 1 of Act 300, Public Acts of 1909. Under the provisions of that section the appointee upon confirmation by the Senate, is entitled to hold the office the full term ending January 15, 1913.

6.

William D. Calverly, of Houghton county, appointed September 1, 1909, as member of the Board of Control of the Michigan College of Mines, to fill vacancy caused by the resignation of Walter Fitch, for the term ending June 9, 1913.

This appointment is made under Section 1892, Compiled Laws of 1897. Under the provisions of that section the appointee was entitled to hold the office only until the beginning of the session of the Legislature of 1911, and his term expired at that time. If re-appointed, he is entitled to hold the office for the term ending June 9, 1913.

7.

Elizabeth G. Flaws, of Grand Rapids, Kent county, appointed September 8, 1909, as a member of the Board of Registration and Examination of Nurses, for a term of three years from and after July 31, 1909.

The appointment in this case is made under authority of Section 1 of Act 319, Public Acts of 1909. The appointee in this case upon confirmation by the Senate, is entitled to hold the office for the full term of three years from and after July 31, 1909.

8.

John S. Weidman, of Mt. Pleasant, Isabella county, appointed September 8, 1909, as a member of the Board of Control of the Home for the Feeble Minded and Epileptic, to fill vacancy caused by the death of Charles T. Wilbur, M. D., for the term ending January 31, 1915.

The same rule applies in this case as in the case of Horace Kitchell,

No. 2, and the appointee holds only until the close of the session of the Legislature of 1911 unless a new appointment is made, in which event he is entitled to hold for the term ending January 31, 1915.

9 and 10.

Dr. Arthur W. Scidmore, of Three Rivers, St. Joseph county, appointed September 8, 1909, as a member of the Board of Registration and Examination of Nurses, for the term of six years from and after August 1, 1909.

Elizabeth Tacey, of Detroit, Wayne county, appointed September 8, 1909, as a member of the Board of Registration and Examination of Nurses, for a term of six years, from and after July 31, 1909.

The same rule applies in these cases as applies in the case of Elizabeth G. Flaws, No. 7, and upon confirmation by the Senate, these appointees are entitled to hold for the full term.

11.

Edwin L. Keyser, of Pontiac, Oakland county, appointed September 30, 1909, as a member of the Board of Trustees of the Eastern Michigan Asylum, to fill vacancy caused by the death of Edward M. Murphy, for the term ending the second Monday in February, 1911.

The appointment in this case is made under authority of Sections 3 and 4 of Act 217, Public Acts of 1903. Under the provisions of these sections the term of this appointee ended the second Monday in February, 1911.

12.

Walter Beckwith, of Detroit, Wayne county, appointed September 30, 1909, as a member of the Board of Examiners of Horseshoers, for a term of five years, from and after August 4, 1909.

The appointment in this case was made under authority of Section 2 of Act 229, Public Acts of 1899. Under the provisions of this section if the appointment is confirmed by the Senate, the appointee is entitled to hold for the full term of five years from and after August 4, 1909.

13.

E. E. Honey, of Kalamazoo, Kalamazoo county, appointed December 23, 1909, as a member of the Dental Board, for a term of five years from and after January 1, 1910.

The appointment in this case is made under authority of Section 2 of Act 338, Public Acts of 1907. This section contains no provision for confirmation by the Senate. Appointee is therefore entitled to hold for the full term of five years from and after January 31, 1910.

14.

Will E. Collins, of Owosso, Shiawassee county, appointed January 17, 1910, as a member of the Board of Pharmacy, for the term of five years, from and after January 1, 1910.

The appointment in this case is made under authority of Section 5303, Compiled Laws of 1897. Under the provisions of this section if the ap-

pointment is confirmed by the Senate, the appointee is entitled to hold the office for the full term of five years from and after January 31, 1910.

15.

Edwin O. Shaw, of Newaygo, Newaygo county, appointed February 24, 1910, as a member of the Board of Trustees of the Michigan Soldiers' Home to fill vacancy caused by the death of Edward P. Allen, for the term ending February 28, 1915.

The same rule applies in this case as applies in the case of Elliott F. Graybill, No. 4, and the term expires at the end of the session of the Legislature of 1911. If reappointed, the appointee is entitled to hold for the term ending February 28, 1915.

16 and 17.

Henry R. Pattengill, of Lansing, Ingham county, appointed February 24, 1910, as a member of the Board of Library Commissioners for a term of four years from and after June 8, 1909.

Henry N. Loud, of AuSable, Iosco county, appointed February 24, 1910, as a member of the Board of Library Commissioners, for a term of four years, from and after June 8, 1909.

The appointments in both of these cases were made under authority of Section 1 of Act 115, Public Acts of 1899. Under the provisions of that section if the appointments are confirmed by the Senate, the appointees are entitled to hold for the term of four years from and after June 8, 1909.

18.

Dr. Carrie C. Classen, of South Haven, Van Buren county, appointed March 9, 1910, as a member of the Board of Osteopathic Registration and Examination, for a term of five years, from and after April 30, 1910.

The appointment in this case is made under authority of Section 1 of Act 162, Public Acts of 1903. Under the provisions of that section if the appointment is confirmed by the Senate, the appointee is entitled to hold for the full term of five years from and after April 30, 1910.

19.

Dr. Wilbert B. Hinsdale, of Ann Arbor, Washtenaw county, appointed June 29, 1910, as a member of the Board of Trustees of the State Sanatorium for the Care and Treatment of Persons having Tuberculosis, for the term of six years, from and after September 1, 1909.

The appointment in this case is made under authority of Section 2 of Act 254 of the Public Acts of 1905. Under the provisions of this section, if the appointment is confirmed by the Senate, the appointee is entitled to hold for the full term of six years from and after September 1, 1909.

20.

Louis H. Weil, of Port Huron, St. Clair county, appointed June 29, 1910, as a member of the Mackinac Island State Park Commission, to fill vacancy caused by the death of John R. Bailey, for the term ending June 21, 1913.

The appointment in this case is made under the provisions of Section 2 of Act 14, Public Acts of 1909, which provides that vacancies upon said board shall be filled by the Governor. There is no provision for the confirmation of a vacancy appointment by the Senate. The appointee in this case is therefore entitled to hold the office for the balance of the term ending June 21, 1913.

21.

Dr. Bret Nottingham, of Lansing, Ingham county, appointed September 28, 1910, as a member of the Board of Registration in Medicine, to fill vacancy caused by the resignation of Dr. Joseph H. Ball, for the term ending September 30, 1911.

The appointment in this case is made under authority of Section 1 of Act 191, Public Acts of 1903, which provides that a person appointed to fill a vacancy shall hold office during the unexpired term of the member whose place he fills. If this appointment is confirmed by the Senate, the appointee is entitled to hold for the balance of the term ending September 30, 1911.

22.

Jennie Leece, of Traverse City, Grand Traverse county, appointed November 4, 1910, as a member of the Board of Registration and Examination of Nurses, to fill vacancy caused by the ineligibility of Alfreda Maud Galbraith, for the term ending July 31, 1912.

The appointment in this case is made under authority of Section 1 of Act 319, Public Acts of 1909. Under the provisions of that act, if the appointment was confirmed by the Senate, the appointee holds for the balance of the term ending July 31, 1912.

23.

J. A. Heath, of Richmond, Macomb county, appointed November 12, 1910, as a member of the Board of Trustees of the State Sanatorium for the Care and Treatment of Persons having Tuberculosis, for the term of six years, from and after September 1, 1909.

The same rules applies in this case as applies in the case of Dr. Wilbert B. Hinsdale, No. 19, and upon confirmation by the Senate, the appointee is entitled to hold the office for the full term of six years from and after September 1, 1909.

24.

Edward A. Phillips, of Fenton, Genesee county, appointed November 30, 1910, as a member of the Board of Control of the Michigan Reformatory, to fill vacancy caused by the resignation of Leonard Freeman, for the term ending February 15, 1915.

The appointment in this case is made under authority of Section 2081, Compiled Laws of 1897. Under the provisions of that section a person appointed when the Senate is not in session to fill a vacancy in the office, holds only until the next session of the Senate. The term of the appointee in this case, therefore, expired at the beginning of the session of the Legislature in 1911.

25.

John S. Haggarty, of Detroit, Wayne county, appointed December 20, 1910, as a member of the Board of Control of the Michigan State Prison, to fill vacancy caused by the death of T. J. Navin, for the term ending February 15, 1915.

The same rule applies in this case as applies in the case of Edward A. Phillips, No. 24, and the term of this appointee expired at the beginning of the session of the Legislature in 1911.

26.

William F. Gallagher, of Owosso, Shiawassee county, appointed December 20, 1910, as a member of the Board of Trustees of the Industrial School for Boys, to fill vacancy caused by the resignation of W. A. Rosenkrans, for the term ending December 31, 1912.

The appointment in this case is made under authority of Section 2204 of the Compiled Laws of 1897. Under the provisions of that section the term of office expired at the beginning of the session of the Legislature in 1911.

27.

William G. Malcomson, of Detroit, Wayne county, appointed December 28, 1910, as a member of the Board of Trustees of the Eastern Michigan Asylum, to fill vacancy caused by the death of G. J. Vinton for the term expiring the second Monday in February, 1913.

The same rule applies in this case as applies in the case of Edwin L. Keyser, No. 11, and the term expired at the close of the session of the Legislature of 1911. If reappointed the appointee is entitled to hold for the balance of the term expiring the second Monday in February, 1913.

28.

George S. Harrington, of Kalamazoo, Kalamazoo county, as member of the State Board of Health, appointed December 28, 1910, to fill vacancy caused by the death of Charles A. Blake, for the term expiring January 31, 1915.

The appointment in this case is made under authority of Section 4397, Compiled Laws of 1897. Under the provisions of that section the term of office of this appointee expired at the opening of the session of the Legislature of 1911.

29.

Relative to the appointment of Frank S. Neal as State Inspector of Oils, will say that the appointment was made pursuant to the provisions of Section 1 of Act 39, Public Acts of 1909, which provides that the "term of office shall be two years from the date of appointment or until his successor shall be appointed and shall qualify." According to the statement in your letter Mr. Neal was appointed September 1, 1910, for a period of two years. It is my opinion that this is a valid appointment and that the term of office will expire August 31, 1912.

This opinion was prepared prior to the receipt of your letter of May 17th and for that reason covers some of the recess appointments not therein referred to.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

TAX LAW. Assessment of shares of bank stock.

May 17, 1911.

Mr. William J. Orr, Bay Port, Michigan:

Dear Sir—I am in receipt of your letter of the 15th instant, in reference to the assessment of the shares of the Blanchard State Bank.

This Department has universally ruled for many years that personal property does not have to be assessed as of the second Monday of April, but that the residence of the person assessed on that day determines his residence for the purposes of taxation. The bank in question was organized prior to May first and the shares are personal property and as such subject to taxation. Under Section 24 of the general tax law, the supervisor has until the first Monday in June in which to complete his assessment roll. There is no occasion for a double assessment of the personal property of the persons owning shares in such bank if the money which they have invested in the capital stock of said bank had been given to the supervisor prior to the organization of the bank. They would unquestionably have a right to have their assessments corrected in this particular after the organization of the bank and they would no doubt have a right to appear before the board of review and have their assessments corrected if they have not already done so. I cannot see any injustice to the share holders and must adhere to my former opinion that the bank having been organized prior to May first, it is the duty of the supervisor to assess the shares of stock as the law contemplates.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

N-m-o.

TAXATION. TRUST COMPANIES. Shares of stock to be assessed as personal property.

May 18, 1911.

Mr. Charles D. Thompson, City Attorney, Bad Axe, Michigan:

Dear Sir—Your letter of the 8th instant received and contents noted. You ask if a Michigan trust company, the capital stock of which would be invested in stock in Michigan corporations would be taxed under our present law in addition to the tax now levied and collected upon either the corporations or the stock in corporations the stocks of which represent as stated, the entire capitalization.

In reply thereto will say that Hon. John E. Bird, Attorney General, under date of March 21, 1907, gave an opinion to Hon. Henry M. Zimmermann, Banking Commissioner, to the effect that trust companies organized under Act No. 108 of the Public Acts of 1889 would not have

the general right under the laws of this State to invest its capital in the stock of private corporations. Section 6168 of the Compiled Laws, being Section 13 of said act, provides, in part, that:

"All real estate owned by any such company may be taxed as other real estate in the city, village or township where the same may be situated and the residue of its capital shall be taxed as personal property, etc."

This section also provides that the shares of stock of a corporation established under such act shall be deemed personal property. This practically establishes the same rule with respect to the taxation of the shares of stock of a trust company as is established for the assessment of the capital stock of a bank. In other words, the value of the capital stock is determined, from which is deducted the assessed value of real estate. This amount divided by the number of shares would give the cash value for purposes of taxation. The fact that the capital of a trust company is invested in securities or stocks of a corporation which is assessed on its capital or otherwise would make no difference in the assessment of the shares of stock in the trust company.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

TAXATION. Buildings and improvements situate upon leased lands to be assessed as personal property.

May 18, 1911.

Mr. John Simonson, Supervisor, Wakefield, Michigan:

Dear Sir—I am in receipt of your letter of the 15th instant, enclosing copy of lease executed by Ann Conley, Andy Byrne and John Ahola, leasing certain premises described in said lease for a period of ninety-nine years. The persons occupying the land under said lease, as you state, are not entered on the assessment roll as taxpayers and they desire relief therefrom even to the extent of annulling the lease.

The eleventh subdivision of section eight of the general tax law provides that all buildings and improvements situate upon leased lands, except where the value of the real property is also assessed to the lessee or owner of such buildings and improvements, shall be assessed as personal property. I also call your attention to the case of *Osborn vs. Potter*, 101 Mich. 300, which holds that buildings erected on leased lands are personal property and they are not a part of the realty during the existence of the lease. I am not at liberty to advise you as to whether or not the lease in question might be annulled. As to this question you should consult private counsel.

I return herewith copy of lease in question.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o-encl.

VILLAGE LAW. ORDINANCE RELATIVE TO AUTOMOBILES.

Ordinance relative to speed of automobiles may be passed by village.

May 18, 1911.

Major William R. Oates, Secretary to the Governor, Capitol, Lansing, Michigan:

Dear Sir—I have your communication of May 16th, enclosing communication of C. R. Curtis of Watervliet, Michigan, under date of May 13th, addressed to the Governor. The inquiry presented in Mr. Curtis' communication is as follows:

"A village or city passing an ordinance prohibiting automobiles running at a speed faster than six or even eight miles an hour on any of the streets of said village or city with a penalty for the violation of said ordinance. Question: Can said penalty be enforced should a person be convicted of violating the ordinance?"

In reply thereto will say a city or village possesses the right to pass ordinances not contrary to the general laws of the State. This authority is given by Acts 278 and 279 of the Public Acts of 1909. Your attention, however, is directed to the provisions of Sections 7 and 9 of Act 318 of the Public Acts of 1909, which is an act providing for the regulation of motor vehicles operated upon the public highways of the State. There is probably no question but that an ordinance can be passed in relation to the subject in question that can be enforced. Such ordinance, however, cannot violate the provisions of the general law relating to automobiles. I have heretofore refrained from passing upon proposed provisions in either village or city charters for the reason that under authority of Section 18 of Act 278 of the Public Acts of 1909, it becomes the duty of the prosecuting attorney to advise charter commissions of villages and in the case of cities there is always a city attorney who may be called upon. I would therefore suggest that Mr. Curtis be referred to his prosecuting attorney who would be in a position to advise him in accordance with the law and as the facts may warrant.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

TAXATION. Assessment of property of street railroads.

May 18, 1911.

Mr. A. J. Baker, Supervisor, Coloma, Michigan:

Dear Sir—Replying to your letter of the 17th instant. I direct your attention to subdivision sixteen of section eight of the general tax law, relative to the assessment of personal property of street railroads, etc. Of course, you will understand that the real estate would be assessed the same as though it belonged to an individual.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o.

TAXATION. SOLDIERS' EXEMPTION. The term "taxable property" as found in the proviso in subdivision 11 of section 17 of the general tax law, as amended by Act 309 of the Public Acts of 1909, relates to property that is subject to taxation under the laws of the State of Michigan.

May 18, 1911.

Mr. Earl C. Michener, Prosecuting Attorney, Adrian, Michigan:

Dear Sir—Your letter of the 11th instant received and contents noted. You call attention to the fact that in Lenawee county there are several soldiers of the federal government who served not less than three months in the Civil War that claim the exemption of a homestead under Act 309 of the Public Acts of 1909; that in several instances their property within the State subject to taxation under the general tax law would not exceed \$1,200 in value, but that they are the owners of property outside of the State of Michigan of greater value when taken in connection with the value of the homestead and you request an opinion as to whether or not under such conditions they would be entitled to the exemption.

The latter part of subdivision 11 of section 7 of the general tax law, as amended by Act 309 of the Public Acts of 1909, contains the following proviso:

"Provided, however, That this exemption shall not operate to relieve from the payment of taxes any of the persons hereinbefore enumerated who are owners of taxable property of greater value than \$1,200."

By reason of the phraseology of this proviso, I am compelled to hold that the words "taxable property" must be construed as relating to property that is subject to taxation under the laws of the State of Michigan. From my conclusion in this particular it would follow that real estate or other property which is not taxable under the laws of this State should not be taken into consideration in determining whether or not such persons are entitled to the exemption.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o.

HIGHWAYS. Survey is not necessary in order to authorize the ordinary improvements and repairs upon highways.

May 18, 1911.

Mr. Frank Knapp, Highway Commissioner, Algansee, Branch County, Michigan:

Dear Sir—Your letter of May 10th received. Therein you ask if it is necessary for you to survey all roads on which you expend the highway improvement fund.

In reply will say that Section 10 of Chapter 2 of Act 283, Public Acts of 1909, provides that the highway improvement fund shall be expended by the township highway commissioner * * * in laying out, building and permanently improving or repairing highways or bridges, etc. Section 16 of Chapter 1 of the same act provides that whenever a highway

shall be *laid out* or *altered*, the commissioner, mayor or president of any city or village shall cause an accurate survey to be made of the center line thereof, etc.

Therefore it will be observed that while the highway improvement fund shall be expended in laying out, building and permanently improving or repairing highways, only such highways shall be *laid out* or *altered* by the commissioner as shall be first accurately surveyed according to the provisions of the statute. Consequently in so far as the ordinary improving and repairing of highways is concerned it is my view that a survey is not necessary.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

JUVENILE COURT LAW. There is no institution to which juvenile delinquents between the ages of six and nine years can be committed.

May 18, 1911.

Hon. Daniel A. Campbell, Judge of Probate, Alpena, Michigan:

Dear Sir—We are in receipt of your letter of May 12th, relative to the disposition of juvenile offenders ranging in age from six to nine years, who have committed offenses which would make them juvenile delinquents.

In reply thereto will say that we know of no institution to which such children can be committed if they are adjudicated delinquents only. The only course would seem to be to place them out on probation. If the facts are such as would warrant an adjudication that they are dependent or neglected children, they could be sent to the State Public School. You would not only be authorized but you would be obliged to entertain petitions charging children with delinquency within those ages.

You are somewhat in error in the statement in your letter that children under twelve years of age cannot be committed to the Industrial schools. An examination of the statute will show that girls over the age of ten may be committed to the Industrial Home for Girls (Section 2210, C. L.); also that boys over the age of ten may be committed to the Industrial School for Boys, unless charged with offenses named in proviso (Act 266, Session Laws of 1905).

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

GAME LAW. Justice of the peace has no authority upon a complaint by private individual against a trapper for trapping and killing beaver to order the beaver skins sold by the sheriff.

May 18, 1911.

Mr. David Knox, Justice of the Peace, Manistique, Michigan:

Dear Sir—Your letter of recent date received. Therein you state the following proposition:

“Where a private individual makes complaint against a trapper for trapping and killing beaver, and the sheriff in service of the warrant finds and takes into his possession certain beaver skins, has the court the authority, upon complaint of sheriff and after full hearing, to order such beaver skins sold by the sheriff, and the costs of the condemnation proceedings paid from the proceeds thereof, the balance to be paid into the State treasury?”

In reply thereto I would suggest that the above case be discontinued and that the Game and Fish Warden seize the beaver pelts in question, so that the same may be disposed of under the provisions of section three of the compilation of game and fish laws, which reads in part as follows:

“All birds, animals or fish, or nets, or fishing appliances or apparatus seized by the said Game and Fish Warden shall be disposed of in such manner as may be directed by the court before whom the offense is tried or by any court of competent jurisdiction.”

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

DEEDS. Filing of affidavit with register of deeds for purpose of correcting. A register of deeds might receive and record an affidavit showing mistake in the name of grantee with a view of correcting the record, but the filing and recording of such affidavit could serve no legal purpose.

May 18, 1911.

Mr. Charles H. Goggin, Prosecuting Attorney, Ithaca, Michigan:

Dear Sir—Your letter of May 1st duly received, in which you enclose an affidavit and request my opinion as to whether or not the same would be entitled to be recorded in the office of the register of deeds under the laws of this State. The affidavit in question is made by a party who was one of the grantors in a deed executed in 1884, which deed was recorded in the register's office in Gratiot county, October 21, 1884, and recites the fact that the grantee, “William Smiller” in said deed and the grantee “William Smillie” in a deed dated March 28, 1901, and recorded in said register's office on March 29, 1901, giving the liber and page, are one and the same person and that the said “William Smillie,” a brother-in-law of affiant, purchased said premises from a sister of affiant, Mary C. Belt, now deceased, and affiant, and that his name was misspelled, etc.

The purpose of filing such affidavit would presumably be with a view of correcting the record. In the first place it is my opinion that the

records in the register of deed's office cannot be corrected in such a manner under the laws of this State, and that the proper course to pursue would be to institute proper proceedings in the circuit court in chancery and secure a decree of the court which might under the laws of this State be recorded in the register's office. I am unable to find any statute that would seem to give any such affidavit force or effect for the purpose for which it was evidently designed and it not being such an instrument as the recording laws recognize, it is my opinion that the register of deeds would have authority to refuse to accept same for recording. While the register of deeds might record the affidavit if he saw fit, to do so, yet the recording of same could serve no legal purpose.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-k-o.

GAME LAW. DOG IN DEER HUNTING CAMP. The presence of a dog in the woods, hunting camp, logging camp or a clubhouse during the deer hunting season is *prima facie* evidence of its unlawful use.

May 18, 1911.

Mr. D. W. Hunter, Gladwin, Michigan:

Dear Sir—Your letter of the 17th instant received, in which you ask if it is unlawful to take a bird dog in a deer hunting camp, providing, however, the dog is not used in any way in hunting or pursuing or killing deer.

In reply thereto would say that a portion of section fifteen of an act to provide for the protection of game and birds, etc., passed at the last session of the Legislature and which takes effect August 1, 1911, same being Senate Enrolled Act No. 146, reads as follows:

"No person or persons shall make use of a dog in hunting, pursuing or killing deer; the presence of a dog in the wood, hunting camp, logging camp or a club house during the deer hunting season, shall be *prima facie* evidence of its unlawful use. Any dog pursuing, killing or following upon the track of a deer is hereby declared to be a public nuisance and may be killed at such time by any person without criminal or civil liability."

This provision of the statute, which will be in force during the next open season for hunting deer will fully advise you.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o.

MOTOR VEHICLE LAW. Fines imposed under the motor vehicle law should be paid over to the county treasurer in the same manner as other penal fines.

May 18, 1911.

Mr. John O. Gustafson, Justice of the Peace, Ironwood, Michigan:

Dear Sir—Your letter of May 13th received. Therein you ask substantially the following question: When a person has been convicted of violating the "Michigan Motor Vehicle Law" and has been fined therefor by a justice of the peace, to whom shall the justice forward the amount of such fine?

In reply will say that the constitution provides in section fourteen of article XI that all fines assessed and collected for a breach of the penal laws shall be exclusively applied to the support of libraries and Section 9836 of the Compiled Laws of 1897 specifies to whom such fines shall be paid after they are collected by the officer imposing them. Said section reads as follows:

"All officers or other persons, who shall collect or receive any moneys, on account of any fine, penalty or forfeiture, in any case not hereinbefore provided for, shall pay over the same to the county treasurer within twenty days after the receipt thereof, and in case of failure so to do, the county treasurer shall collect same by attachment in the proper circuit or county court, in the manner hereinbefore provided."

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-m-o.

HIGHWAY LAW. Township board can build two miles of road where the voted tax for one mile and the later subscription fund will cover the cost.

May 24, 1911.

Mr. C. S. Palmerton, Woodland, Barry County, Michigan:

Dear Sir—Your letter of recent date received. Therein you state the following proposition:

"At our spring election our township voted to raise \$1,500 to build one mile of State reward road—later our people started a subscription book among the farmers and secured about \$1,400 more. Now, will our township board have the legal right to build two miles instead of one, provided the voted tax and the subscription fund will cover the cost?"

In reply will say that I am of the opinion that your township board can legally build two miles of road as outlined in your letter and can thereafter apply for the State reward according to the provisions of Section 9 of Chapter 5 of Act 283, Public Acts 1909.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

BANKING LAW. A bank purchasing securities unauthorized as savings bank investments from another bank is not entitled to carry them as legal savings investments.

May 24, 1911.

Hon. Edward H. Doyle, Commissioner of the Banking Department, Capitol, Lansing, Michigan:

Dear Sir—We are in receipt of your letter of May 20th, in which you state as follows: A state bank recently purchased the assets of another state bank among which were certain bonds coming within the provisions of subdivisions (e), (f) and (g) of section 27 of the banking law, which had not been approved by the securities commission. These assets had been permitted to be held by the selling bank by reason of the fact that they were investments prior to the taking effect of the amendments to Section 27 made by Act 262 of the Public Acts of 1905. The purchasing bank contends that because the department permitted them to be held by the selling bank, it should also authorize the purchasing bank to hold the same until maturity. You submit the inquiry as to whether the purchasing bank should be allowed to carry such securities as legal savings investments.

In reply thereto would say that it is our opinion that the purchasing bank should be held to the plain requirements of section 27 and that the fact that the securities mentioned were purchased from another savings bank would not justify you in permitting the bank purchasing same to carry them as legal savings investments. In this connection it may be proper to say that section 27 requires fifteen per cent of the deposits to be kept on hand as a reserve, in cash or reserve banks, three-fifths of the remainder of the deposits are required to be invested in securities mentioned in subdivisions (a) to (i) inclusive of section 27. You will note that subdivision (i) provides that:

“A portion of said remainder not exceeding the capital and additional stockholders' liability may be invested in negotiable paper approved by the board of directors.”

This would authorize a savings bank to carry an amount of negotiable bonds or other negotiable paper up to the amount named in the above quoted provision, even though such bonds or other negotiable paper had not received the approval of the securities commission.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

STATE BOARD OF HEALTH. COUNTY JAILS. The State Medical Inspector has no authority to close a county jail found to be unsanitary. He should report the matter to the circuit judge to act under the provisions of Sections 10538 and 10539, C. L. of 1897.

May 24, 1911.

Dr. F. W. Shumway, Secretary State Board of Health, Capitol, Lansing:

Dear Sir—We have considered your letter of May 18th with the enclosures submitted therewith, relative to the authority of the State Board of Health in the matter of the county jail of Lake county in the village of Baldwin.

It appears from the enclosures that an investigation of the Lake county jail by the State Medical Inspector shows said jail to be unfit for the detention of prisoners by reason of its dark, unwholesome and unventilated condition; that a notice was served upon the board of supervisors of Lake county on October 15, 1910, directing them to remedy the existing conditions and while they have been remedied to the extent of cleaning up the premises, the jail still remains dark and unventilated.

Act 293 of the Public Acts of 1909, by authority of which the State Medical Inspector made an examination of the jail, authorizes said inspector to make a report of the conditions to the State Board of Health with recommendations. This we understand was done before the order of October 15, 1910, was issued.

The power granted to the State Board of Health and the State Medical Inspector, under the provisions of section one of this statute, in our judgment, does not authorize even the board or the medical inspector to close up the jail under the conditions shown by the correspondence to exist. The only authority for closing the jail under such circumstances is found in Sections 10538 and 10539 of the Compiled Laws of 1897, authorizing the circuit judge or circuit court commissioner to designate the jail of another county in cases where a county jail "becomes unfit or unsafe for the confinement of prisoners." It is, therefore, our view that the only proceedings that can be taken by your board is to submit the facts with reference to your investigation and recommendation to the circuit judge or to a circuit court commissioner of the county of Lake with the request that they take action looking to the designation of a county jail of another county for the confinement of prisoners.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

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DETROIT GRAND HAVEN & MILWAUKEE RAILWAY COMPANY.
Computation of taxes for 1911 and notification with regard thereto.

May 24, 1911.

Hon. Oramel B. Fuller, Auditor General, Capitol, Lansing:

Dear Sir—For reply to your letter of the 23rd instant with regard to the computation of the taxes upon the D., G. H. & M. Ry. Co. for 1911 and its notification with regard thereto, I would say that I suggest that you follow out the same procedure with regard to fixing and charging upon your books the tax which was fixed this year as was followed for 1909 and 1910.

The amount of taxes for last year at one per cent on the capital stock, which was \$70,000 may not be the correct figures for this year. I suggest that it might be well to look over such data as we have at hand to determine at what figure the capital stock should be fixed this year.

As you know an information was filed against this company to recover back taxes from 1855 as well as the taxes computed by you for the years 1909 and 1910. The company demurred to the information which we filed and that demurrer was overruled by the circuit court last week. The company will now either answer or take proceedings to review the action of the circuit judge in overruling the demurrer. I am inclined to believe they will answer as the points which they made on demurrer are not meritorious. After answer, testimony will be taken and the case submitted for the hearing on its merits as early as is possible.

Very truly yours,

FRANZ C. KUHN,

Attorney General.

W-m.

COUNTY JAILS. SPECIAL ELECTIONS. Elections to bond for a county jail can be had only at the November or biennial spring election dates.

June 1, 1911.

Mr. Joseph J. O'Connor, Prosecuting Attorney, L'Anse, Michigan:

Dear Sir—Replying to your letter of May 27th will say that we know of no statute other than Act 41 of the Public Acts of 1909, authorizing elections for the purpose of submitting the question of bonding a county for the purpose of building a new jail. The provisions of Section 2493 of the Compiled Laws of 1897, in our judgment, are superseded by Act 41 of the Public Acts of 1909, so far as it has application to the question of calling special elections for the purpose of bonding for the construction of county buildings.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

ELECTION LAW. RIGHT OF MAIL CARRIER TO VOTE. A mail carrier can only vote in the precinct or township in which he is a legal voter.

June 1, 1911.

Mr. D. W. McIntire, Township Clerk, Comins, Oscoda County, Michigan:

Dear Sir—I have your communication of May 27th. In reply thereto would say a mail carrier can only vote in the precinct or township in which he resides and in which he is a legal voter. A mail carrier stands in no different position than any other voter. If there has been an offense against the election laws you should take the matter up with the prosecuting attorney.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

L-k-o.

CONSTITUTIONAL LAW. A bridge is not a public utility within the meaning of Section 25 of Article VIII of the revised constitution.

June 1, 1911.

Mr. A. Elwood Snow, City Attorney, Saginaw, Michigan:

Dear Sir—I am in receipt of your letter of May 27th wherein you state:

“The Central Bridge Company, a corporation, own and operate a toll bridge over and across the Saginaw river. It desires to repair said bridge and give it to the city. The question has been raised as to whether or not the city has power through its common council to acquire this bridge in the manner above set forth. The section of the constitution is a new one and has never been passed upon by the court. Would you say that this bridge is such a public utility that the city, through the common council, can acquire this bridge unconditionally?” and refer to Section 25, Article VIII of the revised constitution, which provides in part:

“Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless said proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village,” etc.

For reply to your communication would say that I do not believe a bridge is a public utility within the meaning of the constitutional provision to which you refer. You will note that section 23 of the same article of the constitution gives cities and villages authority to acquire, own and operate public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof. When reference is made in section 25 to public utilities, I believe that the words would be construed to refer to such public utilities as are named in section 23. It is my opinion, therefore, that these constitutional provisions have no bearing upon the question submitted. It seems to me that the question is one of power under the charter of the city. If the common council has power to acquire the bridge under its

charter, there is nothing in the constitutional provisions to which you refer that would prevent the city from exercising the power given by its charter.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

LIQUOR LAW. The council of a village situated partly in a county where the local option law has been adopted and partly in a county where the license system prevails, has authority to approve an application to establish a saloon in that part of the village which is situated in the county where the license system prevails.

June 1, 1911.

Mr. B. C. Hemingway, Otter Lake, Michigan:

Dear Sir—I am in receipt of your letter of May 24th in which you ask whether or not the council of a village situated partly in Lapeer county and partly in Genesee county may lawfully approve the application of a person to establish a saloon in that part of the village which is situated in Genesee county?

For reply thereto would say that under the provisions of the local option statute the county is the unit and the sale of liquor is only prohibited within the boundaries of the county adopting that statute. If an incorporated village or city is divided by a county line there is no law prohibiting the sale of liquor by licensed dealers in the part of the city or village situated within the county where the license system prevails. It is my opinion, therefore, that the village council may lawfully approve an application to establish a saloon in that part of the village situated in Genesee county.

Further answering your letter would say that inasmuch as the village council has authority to grant the license, the village would be entitled to its share of the license fee. The township in which a part of the incorporated village is situated would have no right to approve an application for a saloon to be located within the corporate limits of the village.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

La-m-o.

MORTGAGE TAX LAW. Act 91 of the Public Acts of 1911 has no application to a mortgage owned by a resident of this State on land in the State of Indiana.

June 1, 1911.

Mr. Edmund A. Wills, Attorney-at-Law, South Bend, Indiana:

Dear Sir—Your letter of the 24th instant received and contents noted. In reply thereto, I am enclosing you herewith a copy of the new mortgage tax law, being Act 91 of the Public Acts of 1911, also a copy of official opinion construing the said act in part, given by the Attorney General under date of May 11, 1911, to Mr. William B. Hatch of Ypsilanti, Michigan. I will say further that this tax only provides for the

payment of a registry tax on mortgages in so far as they cover lands within the State of Michigan. It would have no application to a mortgage owned by a resident of the State of Michigan on land in the State of Indiana. Such a mortgage would continue to be assessed as a personal property credit to the owner in Michigan under the general tax law.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

M-m-o-encls.

INCOMPATIBILITY. JUSTICE OF THE PEACE AND MEMBER OF THE BOARD OF REVIEW. Offices of justice of the peace and member of the board of review are incompatible.

June 1, 1911.

Mr. George Bennett, Prosecuting Attorney, West Branch, Michigan:

Dear Sir—Your letter of May 16th received. Therein you ask if a regularly elected justice of the peace, who is a member of the township board, can also hold the office of member of the board of review.

In reply will say that it is my opinion that the two offices to which you refer are incompatible and therefore cannot be held simultaneously by one person. Section 3851 of the Compiled Laws of 1897, being section 28 of the general tax law, provides, in part, that:

"The township board may temporarily fill any vacancy which shall occur in said membership of said board of review, but no member of such township board shall be eligible to fill such vacancy."

If a member of the township board could also hold office as a member of the board of review, then in case of a vacancy occurring on the board of review, he, in his capacity as member of the township board, would have a voice in the appointment of a colleague to fill the vacancy on the board of review. This in my judgment constitutes incompatibility. It is a familiar principle in connection with the common law doctrine of incompatibility that the acceptance of the second of two incompatible offices, ipso facto, operates as a vacation of the first office.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-m-o.

INDETERMINATE SENTENCE LAW. A convict who has served one term in the Michigan Reformatory and is serving a second sentence therein and who while serving such second sentence is released upon parole and commits a crime for which he is convicted and sentenced to a term of from one to five years, which latter term does not commence until after the expiration of the second sentence, is not, while serving the second sentence after being returned for violation of the parole, a prisoner who has been twice previously convicted of a felony so as to prohibit his parole from prison.

June 1, 1911.

Mr. M. H. DaFoe, Clerk of the Board of Pardons, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of May 29th with reference to the case of Bert Raak. It appears from your statement that Raak was convicted and served seven months in the Michigan Reformatory, being released at the expiration of his sentence. In March, 1904, he was again convicted and sentenced to the reformatory for a term of three to fifteen years. After serving a part of this sentence he was released upon parole and while upon parole committed a crime for which he was again convicted and sentenced to a term of one to five years. He was entered on the prison records as being returned for violation of the parole, and that the term of service of his last sentence would not begin until he had completed his second sentence of from three to fifteen years. You ask whether or not under the circumstances Raak is now eligible to parole.

For reply thereto would say that Section 5 of Act 184, Public Acts of 1905, relating to indeterminate sentences and the parole of prisoners thereunder, provides, in part, that:

“Prisoners who have been twice previously convicted of a felony shall not be eligible to parole.”

Section 10 of the same act provides:

“Any prisoner committing a crime while at large upon parole or conditional release and being convicted and sentenced therefor shall serve the second sentence to commence from the date of the termination of the first sentence after the first sentence is served or nulled.”

It appears therefore that Raak at the present time is serving his second term in the reformatory. He will not commence serving his third term until the expiration of the term of sentence under which he is now confined in the prison.

Under the circumstances, Raak is in my opinion, to be treated at the present time as a second term convict. He would not therefore come within the class of prisoners who are not eligible to parole by reason of having twice previously been convicted of a felony. The board may therefore in its discretion release Raak upon parole if in its discretion it deems it advisable so to do.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

La-k-o.

GARNISHMENT. EXEMPTION. If the garnishee is indebted to the defendant for personal labor and defendant is a householder at least \$8 of the indebtedness is exempt and 80% of the amount of the indebtedness not exceeding \$30.

June 1, 1911.

Hon. Walter R. Ardis, Judge of the Recorders Court, Cadillac, Michigan:

Dear Sir—Your letter of May 19th received. Therein you refer to Section 2 of Act No. 172 of the Public Acts of 1901, being "An act to amend Section two, Section six and Section ten, of an act entitled, 'An act to authorize proceedings against garnishees, and for other purposes,' being chapter thirty-five of the Compiled Laws of the State of Michigan of 1897," and ask my construction thereof. Said Section 2 reads, in part, as follows:

"When the defendant is a householder having a family, nothing herein contained shall be applicable to any indebtedness of such garnishee to the defendant for the personal labor of such defendant, or his family to the amount of eighty per centum of such indebtedness, but in no case shall more than thirty dollars of such indebtedness be exempt from the operation of this act, and in all cases at least eight dollars shall be so exempt."

I believe that the above provisions admit of only one construction, namely, that the amount of exemption is estimated upon the basis of 80% of the amount of indebtedness. The maximum exemption is fixed, however, at \$30, so that if such 80% produce a sum in excess of this maximum, such excess is not entitled to be exempted from the operation of the act. In any case, at least \$8 is always exempt, so that if 80% of the indebtedness amounts to any sum less than \$8, such sum cannot be reached by garnishment.

In the case which you present the amount of indebtedness is \$40. The principal defendant is entitled to an exemption of 80% thereof which is \$32. However, \$30 is the maximum amount of exemption which the statute allows. Therefore the principal defendant is entitled to an exemption of \$30 and the remaining \$10 should be used to pay costs and apply upon the judgment.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mc-k-o.

CITIZENSHIP. WOMAN. An alien woman who marries an American citizen becomes an American citizen, and is entitled to vote in school elections on the proposition of bonding to build a high school, if otherwise qualified.

June 1, 1911.

Mr. William Kauthen, Garden, Michigan:

Dear Sir—Your letter of the 17th instant received. Therein you ask whether an alien woman who marries an American citizen in this country thereby becomes a citizen of the United States and whether she is entitled to vote at school elections on the proposition of bond-

ing the township to build a high school. In answer to the above will direct your attention to Section 1994 of the United States Compiled Statutes (1901), which reads:

"Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Therefore if the woman to whom you refer was capable of becoming a naturalized citizen of the United States, she became an American citizen by the fact of her marriage with an American citizen. Your attention is likewise called to Section 4 of Article III of the Revised Constitution of Michigan, which reads:

"Whenever any question is submitted to a vote of the electors which involves the direct expenditure of public money or the issue of bonds, every woman having the qualifications of male electors who has property assessed for taxes in any part of the district or territory to be affected by the result of such election shall be entitled to vote thereon." also compiler's Section 43, General School Laws, which reads, in part, as follows:

"In all school elections every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the district, or who is the parent or legal guardian of any child of school age included in the school census of said district, and who has resided in said district three months next preceding such election, shall be a qualified voter."

If the woman who is the subject of your inquiry is a citizen of the United States, is over twenty-one years of age, owns property which is assessed for school taxes in the district proposed to be bonded, and has resided in said district three months next preceding such election, I am of the opinion that she may vote on the proposition of bonding the district for the purpose of building said high school.

As to whether a petition for a special meeting can be presented at this time, such meeting to be called for the purpose of bonding the district for the construction of a school house, it is my view that there can be no objection to such a course of action.

You inquire further if the stockholders in a certain creamery can vote at a school election. Will refer you for your answer to Section 43, General School Laws above quoted. Citizens having the qualifications therein named are qualified voters at all school elections.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

McK-o.

JUVENILE COURT LAW. TOWNSHIPS. Counties are liable for the support of juveniles when maintained at the detention room or in the custody of the county agent or probation officers.

Townships can impose no liability upon the county for care and maintenance furnished children against whom proceedings are pending in juvenile courts.

June 1, 1911.

Hon. Montgomery Webster, Judge of Probate, Ionia, Michigan:

Dear Sir—We are in receipt of your letter of May 29th, in which you submit the question: When is the township relieved of the expenses for the care and support of juveniles against whom proceedings have been instituted and when does such expenses become a charge upon the county to be paid under the order of the Probate Court?

In reply thereto will say that Section 10 of the Juvenile Court Law, Act 6 of the extra session of 1907, provides as follows:

“All children while under orders of the court shall be in the care and custody of the county agent or probation officer or such other person as the court may designate, and all necessary expenses incurred for the proper care and maintenance of said children while in such custody shall be paid by the county treasurer on the order of the court.”

It is our view that the expense of the custody and care of children against whom proceedings are instituted in the Juvenile Court should be paid by the county only when the children are kept and maintained in the detention room, or are in the custody of the county agent, probation officer or person designated by order of the court for that purpose, either pending the hearing upon the charges or pending their transportation to the institution to which they may have been committed by the order of the Court. The expenses of the transportation to such institution are paid by the State through the Board of State Auditors, in accordance with the provisions of Section 5. We are of the opinion that the county would not be liable for the maintenance of children while they remain in the custody of their parents when they are only required by order of the Court to make a report to the county agent by the terms of their probation. Poor officers of townships or municipalities can impose no liability under Section 10 upon the county for care and maintenance furnished children against whom proceedings are pending in the juvenile court; they can impose a liability only under the poor laws and this in your county would be against the township or municipality. The probate court can only impose a liability upon the county under Section 10 above quoted. Neither are we of the opinion that the county would be liable for the expense charged back from another county for the maintenance of a child ordered committed to the State Public School but whose mother ran away with it to another county where it became sick and such county was obliged to support it during its illness.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

DRAIN LAW. SCHOOL DISTRICTS. School district cannot be assessed for a drain tax.

June 1, 1911.

Mr. Charles Gooden, Lamotte, Sanilac Co., Michigan:

Dear Sir—Your letter of May 15th received. Therein you inquire if a drain tax can be legally assessed against a school district.

In answer thereto would say that I am of the opinion that the property of a school district is exempt not only from general taxation by virtue of Section 3830, Compiled Laws of 1897, but also from all special assessments for improvements, etc. Section 11 of Article XI of the Revised Constitution of 1908, reads as follows:

"The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the State for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the State for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation."

It is my view that neither the county nor any officer thereof has any power to tax school property. If school property could be assessed for local improvements it could be sold upon default of payment and the proceeds thereof would be thereby diverted from the school fund to a purpose entirely foreign to the one for which they were originally intended. The constitution clearly provides that all school lands and property and the proceeds thereof shall remain a perpetual fund, the income of which shall be applied to the specific object of the original grant, namely, school purposes. See *People ex rel. Little v. Trustees of Schools*, 118 Ill. 52; *Erickson et al. v. Cass County et al.*, 11 N. Dak. 494; *Edgerton v. The Huntington School Township*, 126 Ind. 261.

Therefore your county drain commissioner in my judgment, has no right to assess a school district for the construction of the drain.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

BANKING LAW. Two or more individuals have the authority to hold bank stock jointly.

A corporation may hold bank stock for purposes reasonably necessary to carry out the objects for which the corporation was created.

May 24, 1911.

Delivered to Com. of Banking, June 8.

Hon. Edward H. Doyle, Commissioner of the Banking Department,
Capitol, Lansing:

Dear Sir—You state in your letter of April 20th that the banking department has ruled that the several sections of the banking law relating to stockholders require the individual ownership of capital

stock of State banks; that in recent reports to the department it appears that in numerous instances capital stock of State banks is owned by firms, co-partnerships, corporations and two or more individuals jointly. You inquire whether such a holding is legal.

In reply thereto will say that it is our view that two or more individuals have the authority to hold bank stock jointly, also that co-partnerships have the same right.

The question of the right of a corporation to take and hold stock in a bank is dependent upon the statute providing for the organization of such corporation and the manner in which the stock is acquired. The rule is thus stated in Clark and Marshall on Corporations, page 523:

"A corporation has no power to subscribe for or purchase shares of stock in another corporation unless such power is *expressly granted* or unless the nature of the corporation and the circumstances under which the stock is acquired are such as to render the transaction a necessary or reasonable means of carrying out the object for which it was created or of accomplishing some purpose which is authorized by its charter."

Without making an extensive examination into the acts providing for the creation of the different classes of corporations doing business in this State, will say that in the great majority of cases the act providing for the organization of such corporations does not authorize the purchasing and holding of shares in other corporations, and under the general rule above stated such corporations would have no authority to purchase and hold shares in banks unless such shares were taken in a manner that could be said to be reasonably necessary to the carrying out of the objects for which the corporation was created. No instance occurs to us where it could be said to be necessary for a corporation to purchase and hold shares of stock in a State bank except as such stock might be taken in payment of debts in good faith owing to the corporation.

Section 50 of the Compiled Laws relative to the construction of statutes provides:

"The word 'person' may extend and be applied to bodies politic and corporate as well as to individuals."

Reference must be had to the provisions of the act of incorporation of the corporation holding the bank stock and a determination must be made of the purpose for which such stock was purchased in order to settle the question of the right of the corporation to take and hold such stock.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

SCHOOL LAW. MAJORITY VOTE. The school law requires a majority vote of the qualified voters present at an annual meeting on a proposition to bond the district.

June 8, 1911.

Mr. William T. Hosner, Attorney-at-Law, Romeo, Michigan:

Dear Sir—I have your communication of May 24th in which you submit a number of inquiries arising in your school district relative to the issuance and sale of school bonds. Your communication reads in part, as follows:

“The first question is relative to canvassing of the votes. 242 votes were cast; 117 in favor of the proposition, 111 against the proposition of bonding and fourteen votes were found by the board not to have been legally voted and consequently were not included. The board declared that the proposition had carried by six votes. The prospective purchaser contends that we should have had a majority of the 242 votes, that is, fourteen votes not properly cast should have been included.

“The next question is relative to the length of notice to be given for the special meeting. The notice we gave was an eight day notice and the prospective purchaser of the bonds contends that we should have given at least a ten-days notice.

“The prospective purchaser further raises the question that we should have a two-thirds majority instead of a bare majority.”

In reply thereto would say Section 91 of the pamphlet of General School Laws, revision of 1909, provides in part, that:

“Any school district may by a majority vote of the qualified voters of said district present at an annual meeting or at a special meeting called for that purpose, borrow money, and may issue bonds of the district therefor, to pay for a schoolhouse site or sites, and to erect and furnish school buildings.”

The foregoing provision clearly requires a majority vote of the qualified voters present at an annual meeting, etc. While the fourteen votes that were thrown out may have been illegally voted, they may have been cast by qualified voters. The majority vote required must be determined from the total number of qualified voters present at the annual meeting, which must be taken to mean these qualified voters present and voting. In view of the fact that the votes thrown out may have been cast by qualified voters, I am inclined to believe that the necessary majority vote must be determined by taking into consideration the total vote cast. If this rule is followed the proposition of bonding was not passed by a majority vote.

In reply to the second inquiry, your attention is challenged to the provisions of Section 42 of the pamphlet of General School Laws which reads in part, as follows:

“All notices of annual or special district meetings, after the first meeting has been held as aforesaid shall specify the day and hour and place of meeting, and shall be given at least six days previous to such meeting, by posting up copies thereof in three of the most public places in the district, one copy of which for each meeting shall be posted at the outer door of the district schoolhouse, if there be one; and in case of any special meeting called for the purpose of establishing or chang-

ing the site of a schoolhouse, such notice shall be given at least ten days previous thereto."

I am inclined to believe that since you gave notice of eight days that it constituted sufficient notice. However, since in my judgment, it will be necessary to call another special meeting, sufficient notice should be given so that this question cannot possibly become material.

In reply to the third inquiry would say that I am of opinion that upon the question of bonding to build a schoolhouse a majority rather than a two-thirds majority is sufficient.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-k-o.

GOVERNOR. The Governor has authority to remove a justice of the peace from office.

June 8, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I am in receipt of your letter of June 2nd requesting an opinion as to the authority of the Governor to remove a justice of the peace from office.

For reply thereto would say that I am of the opinion the Governor has that authority under the provisions of Section 1159 of the Compiled Laws of 1897, which expressly provides that he may remove justices of the peace for incompetency, official misconduct, wilful neglect of duty, extortion, habitual drunkenness, conviction of being drunk or conviction of a felony, after charges are preferred, notice and hearing, as provided in Section 1159 and the succeeding sections of the Compiled Laws.

Act 299 of the Public Acts of 1911, giving Circuit Judges the power to remove justices of the peace in certain cases applies only to the city of Grand Rapids.

Very respectfully yours,
FRANZ C. KUHN,
Attorney General.

La-m-o.

BANKING LAW. The banking commissioner has no right to withhold a certificate of authority from a bank upon the ground that the stockholders thereof are not financially responsible.

June 8, 1911.

Hon. E. H. Doyle, Commissioner of the Banking Department, Lansing, Michigan:

Dear Sir—We are in receipt of your letter of June 5th in which you quote a portion of Section 6096, Compiled Laws of 1897, and submit the inquiry as to whether the Banking Department would be authorized to withhold a certificate of authority to commence business of a bank which had fully complied with the provisions of Section 6090 to 6096 inclusive, upon a showing that the parties owning or controlling a majority of the stock were irresponsible and not collectable to the

amount of additional stockholders' liability provided for in Section 6135, Compiled Laws.

In reply thereto will say that the provision of 6096 referred to in your communication provides as follows:

"But the commissioner with the advice and consent of the Attorney General may withhold such certificate whenever he has reason to believe that the stockholders have formed the same for any other than the legitimate business contemplated by this act."

This clause measures the authority of the commissioner to withhold a certificate of authority to commence business from a bank incorporated under the provisions of the act which has otherwise complied with the provisions thereof. That some or all of the stockholders are irresponsible or uncollectable is no evidence that the stockholders have organized the bank "for any other than the legitimate business contemplated by this act." We know of no provision of law which requires a holder of bank stock to be financially responsible or collectable at law. The provision of statute above quoted is not susceptible of any construction that would authorize the commissioner of the banking department to withhold a certificate of authority from a bank where the stockholders thereof are not financially responsible, provided the other provisions of the statute relative to the organization of a bank have been complied with.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o.

MARRIAGE LAW. COUNTY CLERKS. A county clerk is entitled to a fee of fifty cents for issuing a marriage license.

June 8, 1911.

Mr. B. J. Meyer, Justice of the Peace, St. Joseph, Michigan:

Dear Sir—We are in receipt of your letter of June 5th, inquiring whether a county clerk can legally charge \$2.50 for a marriage license.

In reply thereto will say that Section 8604, Compiled Laws of 1897, fixes the fee of the county clerk at 50 cents. Two courses are open in case of the refusal of the county clerk to issue the license; one to present the proper application and tender the statutory fee [and], in case of the refusal of the county clerk to issue the license, institute proceedings by mandamus to compel its issuance; the other is to institute a criminal complaint under the provisions of Section 8606, Compiled Laws.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-k-o.

SUPERVISORS. SUPERINTENDENTS OF THE POOR. A supervisor is entitled to a compensation of but \$1.50 per day for caring for poor persons.

June 8, 1911.

Mr. J. L. McCormick, Assistant Prosecuting Attorney, Bay City, Michigan:

Dear Sir—We are in receipt of your letter of June 6th, inquiring as to whether the superintendents of the poor can be compelled to issue orders to a supervisor for three dollars per day for services in taking care of poor persons.

In reply thereto will say that Act 98, Public Acts of 1907, amending the statute relative to the powers and duties of township officers and providing that the supervisor shall receive, "for taking the assessment and for all services not connected with the above boards, three dollars per day and at the same rate for parts of days," applies only to services for the township. This is indicated by the earlier provision of the section that, "the following township officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the township in the duties of their respective offices to be verified by affidavit whenever required by the township boards." The provisions of Section 4512, Compiled Laws, authorizing compensation and per diem from the superintendents of the poor on an "order on the county treasurer," and fixing the compensation at \$1.50 per day, in our judgment, is not repealed by implication by the provisions of Act 98, Public Acts of 1907. It is therefore our opinion that supervisors are entitled only to a compensation of \$1.50 per day for services in caring for poor persons.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-k-o.

ASYLUMS. The Board of Trustees of one of the State Asylums has authority to take and hold a bequest and expend the same in any manner not inconsistent with the purposes for which the institution is organized.

June 8, 1911.

(This opinion was sent to Hon. Jason E. Hammond, Lansing, Mich.)

Board of Trustees, Michigan Asylum for the Insane, Kalamazoo, Michigan:

Gentlemen—There has been referred to this department by Hon. Jason E. Hammond, a member of your board, the question of what disposition may properly be made of the bequest of \$1,500 to the Board of Trustees of the Michigan Asylum received by virtue of the will of Joseph McGibney, deceased. Section 5 of Act 217, Public Acts of 1903, provides that the board of trustees, "may take and hold in trust for the State any grant or devise of land

or any donation or bequest of money or other personal property to be applied to the maintenance of insane persons and the general use of their respective asylums."

Under authority of this provision it is our view that the board of trustees has authority to expend this money in any manner consistent with the general purposes for which the institution is organized. They may invest it and use the income or may expend the whole in such manner as they see fit. There is no limitation in the use to which it may be put by the terms of the will, and it is our view that the board of trustees has discretion in the use to which the money may be put, subject to the limitation that it must be used for purposes consistent with those for which the asylum was created.

Very respectfully,

FRANZ C. KUHN,
Attorney General.

Hi-k-o.

HIGHWAYS. TOWNSHIP ROAD SYSTEM. In a township in a county which has not adopted the county road system, the commissioner of highways is required to advertise for bids for the construction of State reward roads where the expenditure is in excess of \$500.

June 8, 1911.

Mr. X. A Boomhower, Prosecuting Attorney, Bad Axe, Michigan:

Dear Sir—Your letter of the 31st ult. received. Therein you submit the following question:

"Where a township in a county which has not adopted the good roads system decides to build a mile of State reward road, is it absolutely necessary for the highway commissioner to advertise for sealed bids, and must the contract be let to the lowest bidder if there has been no collusion?"

In reply thereto will say that it is my opinion that under the provisions of Section 179 of the pamphlet of highway laws it is necessary that the commissioner of highways advertise for sealed proposals and contract with the lowest responsible bidder when the expenditure is of an amount in excess of five hundred dollars.

Said Section 179 of the highway laws reads, in part, as follows:

"In all cases involving an expenditure of an amount over fifty dollars and not exceeding five hundred dollars, in the repairing or construction of roads or bridges, in any township of this State, the commissioner shall submit the proposed expenditure to the township board, and, upon the approval of the said board, the commissioner may make such repairs or cause them to be made; may do the construction work or cause it to be done; may buy the necessary materials and hire the necessary help, but if the proposed expenditure is of an amount greater than five hundred dollars, the commissioner shall first submit the same to the township board, and upon the approval of the said board the commissioner shall advertise for sealed proposals for the doing of such work and the making of such repairs, and together with the township clerk, subject to approval of the township board, shall contract with the lowest bidder giving good and sufficient security for the performance of the work:

Provided, That in case it shall appear to the commissioner and board acting together, in such manner that it seems to them clearly shown, that there has been collusion among the bidders, they may contract privately with any one of the bidders or with some one who was not a bidder, but at a price not to exceed that of the lowest bidder.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

SCHOOL LAW. PAYMENT OF TUITION. TRANSPORTATION OF CHILDREN. Pupils who are enrolled as students in a school district and who have completed eight grades of work as evidenced by a certificate of the superintendent of schools are entitled to have their tuition paid.

June 8, 1911.

Hon. L. L. Wright, Superintendent of Public Instruction, Capitol, Lansing, Michigan:

Dear Sir—I have your communication of June 6th, in which you refer to Act No. 14 of the Public Acts of 1911, which is an act relative to the payment of tuition and transportation to another district of children who have completed the studies of the eighth grade. Your communication reads in part, as follows:

“Section 5 of this act reads as follows:

“Pupils eligible to have their tuition paid shall be the holders of county eighth grade diplomas granted by the county boards of examiners in the several counties under rules and regulations prescribed by the Superintendent of Public Instruction, or shall have completed eight grades of work in a graded school district as evidenced by the written statement of the superintendent of schools in such graded school district.”

“We have had the following case arise in Clinton county. Several pupils took the county eighth grade examination and failed. They then enrolled as students in a graded school district for the remainder of the school year. They took an eighth grade examination in such graded school district and passed. Are they entitled to have their tuition paid under the provisions of the free tuition law?

“In Calhoun county another question has arisen. Pupils who failed to pass the county eighth grade examination take an examination in a graded district in which they have not enrolled and pass such examination. Are they entitled to have their tuition paid?”

In reply thereto would say it will be observed that there are two ways in which a pupil can prove himself eligible to have his tuition paid. First, By passing the eighth grade examination and procuring the eighth grade diploma granted by the board of examiners under the rules and regulations prescribed by the Superintendent of Public Instruction. Second, By completing eight grades of work in a graded school which is to be evidenced by the written statement of the superintendent of schools in such graded school district. No reason appears why a child that fails to pass the regular eighth grade examination conducted by the county boards of examiners may not thereafter enter a graded school district and after he has completed eight grades of work

secure as evidence thereof a written statement from the superintendent of schools and thereby be entitled to have his tuition paid. The law does not prescribe any period of time during which a pupil must be actually a student in a graded school district as a prerequisite of his completion of eight grades of work. It is therefore my opinion that in the Clinton county case, if the pupils actually enrolled as students and completed eight grades of work which is evidenced by a written statement by the superintendent of schools, that they are entitled thereby to have their tuition paid under the provisions of the free tuition law.

In the case arising in Calhoun county a different rule prevails. A statement from a superintendent of schools to the effect that a pupil has completed eight grades of work which statement is based upon an examination conducted for the purpose of entitling a pupil to have his tuition paid has no force or effect. Such a statement would operate as a mere subterfuge. I am inclined to believe that a safe rule to follow would be that a pupil must be actually enrolled as a student in a graded school district in addition to completing the eight grades of work before the written statement as evidence thereof may be considered as giving to the pupil the right to have his tuition paid. I am therefore inclined to believe that in the cases arising in Calhoun county the pupils are not entitled to have their tuitions paid under the free tuition law.

Trusting the foregoing sufficiently advises you, I remain,

Very respectfully,

FRANZ C. KUHN,

Attorney General.

L-k-o.

CRIMINAL LAW. One who embezzles or fraudulently converts to his own use money delivered to him may be prosecuted for larceny under Section 11570 of the Compiled Laws of 1897.

A criminal prosecution under this statute can be maintained only in the county where the crime was actually or in contemplation of law perpetrated.

The prosecution is barred after six years from the time the conversion takes place.

June 8, 1911.

Mr. C. F. Button, Attorney-at-Law, Marquette, Michigan:

Dear Sir—I am in receipt of your letter of May 20th, wherein you submit a statement of facts and ask whether or not thereunder a crime can be said to have been committed and a criminal prosecution maintained.

In this connection you state that the matter was submitted to the prosecuting attorney who gave it as his opinion that; first, no crime was committed but only a breach of trust; second, that if any crime was committed the statute of limitations had run against the same; and third, if any crime was committed, it was committed in Wayne county and should be prosecuted there.

The statement of facts is as follows:

"In 1898, Hodgskins a resident of Marquette county, was carrying several insurance policies upon his own life aggregating \$29,000.00; he was embarrassed financially and was unable to see his way clear to raise

the money to pay the premiums then due or past due; one Jennings a resident of Detroit, and engaged in the insurance business, was in Marquette county and met Mr. Hodgskins, and learned of Mr. Hodgskins' condition; Jennings told Hodgskins that he could arrange in some way so that Mr. Hodgskins policies could be taken care of. Subsequently, and presumptively after Mr. Jennings had made a trip to Detroit, Jennings informed Hodgskins in Marquette county that he had made arrangements by which he could get the money to take care of the policies and give Mr. Hodgskins immediately the sum of \$7,000.00 less the premiums upon a new policy, which it was agreed could be taken out upon the life of Mr. Hodgskins' son, and three years premiums upon the same paid; at this time Jennings had a note amounting to \$16,500 drawn up in favor of the Detroit Savings Bank, and also assignments of the policies for Mr. Hodgskins' signature, and told Mr. Hodgskins that he should sign the papers and then he, Jennings, would go to Detroit and get the money and come back and settle with Hodgskins. Upon this understanding the papers were signed and Jennings went to Detroit. Subsequently, he came back and represented to Mr. Hodgskins that it had taken more money to settle the various premiums than he had expected, and that there was no money to pay Mr. Hodgskins at all; Mr. Hodgskins demurred to this and finally Jennings paid Mr. Hodgskins \$700 with the understanding that there would be a large balance coming to Mr. Hodgskins at the maturity of the policies in 1908.

Among the agreements of Mr. Jennings was that he would keep these policies alive by paying the premiums on them until the date of maturity in 1908; no statements of moneys paid out was ever furnished Mr. Hodgskins by Mr. Jennings.

When the policies should have matured in 1908, Mr. Hodgskins endeavored to obtain a statement and settlement with Mr. Jennings, but Jennings never furnished any statement, but asserted that there was nothing due to Hodgskins.

Mr. Hodgskins not being satisfied with this, placed the matter in the hands of an attorney who investigated the matter but was unable to determine anything or to accomplish any results, and finally a short time since he placed the matter in my hands.

I have investigated the facts in connection with the matter, and as best I could; I ascertained from the Detroit Savings Bank, at the time this transaction took place in 1898 there was an amount of upwards of \$4,000 which went into the hands of Mr. Jennings for Mr. Hodgskins and which the bank supposed was paid to Mr. Hodgskins but which Jennings kept.

This information which was obtained a very short time since, was the first intimation that Mr. Hodgskins had that Mr. Jennings had converted any of this money in 1898."

Under this statement of facts, I do not think it can be said that Jennings was guilty of nothing more than a breach of trust. It seems to me that he might well be charged with larceny under Section 11570 of the Compiled Laws of 1897, which reads as follows:

"If any person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered, shall embezzle or fraudulently convert to his own use, or shall secrete with the intent

to embezzle, or fraudulently use such goods, money, or other property, or any part thereof, he shall be deemed by so doing to have committed the crime of larceny."

I am inclined, however, to the opinion that the offense could be prosecuted, if at all, in the county of Wayne. It appears from the statement of facts that the money was delivered to him in that county and the conversion took place there. In *Hill vs. Taylor*, 50 Mich. 549, it was held that a criminal prosecution for embezzlement could not be maintained in a county where the crime was not actually or in contemplation of law perpetrated. See also *People vs. Brock*, 149 Mich. 464, 12 Cyc 232, 233. This rule would seem to apply with greater force to a prosecution for larceny under the statute above referred to, which contains no provision authorizing the institution of prosecution in any county other than the county where the offense is actually committed. I do not believe it can be said that the offense under the statement of facts above outlined, was either actually or in contemplation of law committed in any county other than the county of Wayne.

I am also of opinion that prosecution of the case is barred by the statute of limitations. Section 11892 of the Compiled Laws of 1897, reads as follows:

"An indictment for the crime of murder may be found at any period after the death of the person alleged to have been murdered; all other indictments shall be found and filed within six years after the commission of the offense; but any period during which the party charged was not usually and publicly resident within this State, shall not be reckoned as part of the six years."

I take it from the statement of facts that Jennings has during all this time been a resident of the State. It also appears from your statement that the money was delivered to Jennings and he converted the same in 1898. It appears, therefore, that more than twelve years has elapsed since the commission of the offense. The rule laid down is that in embezzlement or conversion, the Statute of Limitations begins to run from the date of the actual misappropriation and not from the date the accused was called upon to account. (12 Cyc 255).

The fact that Hodgskins did not know of the conversion until recently does not prevent the running of the Statute of Limitations. Jennings was under no obligation to disclose the fact that he had committed the crime and the rule is that concealment of the crime by the accused does not affect the running of the statute. (12 Cyc 257.)

I, therefore, conclude that a criminal prosecution can not be successfully maintained against Jennings under the statement of facts outlined in your communication.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

La-m-o.

VILLAGES. POLL TAX. A village is entitled to levy a poll tax.

June 15, 1911.

Mr. R. W. Rowe, Cashier, Live Stock Exchange Bank, Camdem, Michigan:

Dear Sir—Your letter of June 9th received. Therein you say that your village council has voted the levy of a poll tax under the provisions of Section 2854, Compiled Laws of 1897. You say that there is a general impression that the above law is inoperative since the passage of the highway law of 1909, and you request my opinion as to the authority of the village council to levy said poll tax.

Replying thereto would say that villages possess the same power under the village law, to assess a poll tax as they possessed prior to the passage of the new highway law.

With reference to the manner of collecting a poll tax, I am enclosing you herewith copy of opinion rendered to Mr. Warren Teddick, Perrinton, Michigan, under date of May 27, 1904. Same will advise you as per your request.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o-encl.

TOWNSHIPS. BORROWING MONEY. A township has authority to issue time orders against a fund which has been provided for by tax where nothing remains to be done except the spreading and collection thereof.

Township has the right to authorize transfer of funds from the good road fund to the contingent fund.

June 15, 1911.

Mr. E. O. Graham, Township Clerk, Shelby, Michigan:

Dear Sir—Your letter of recent date received. Therein you say that at your spring election your township voted to raise one thousand dollars contingent fund. You say that you have borrowed three-fourths of that amount. You wish to be advised as to whether you can issue time orders on the quarter which has not been borrowed.

In reply thereto will say that it has been the holding of this Department that time orders may be issued against a fund which has been provided for by tax when nothing remains to be done before the fund is available except the performance of a ministerial duty on the part of certain officers entrusted with the spreading and collection of the tax. Such orders, however, should not be payable until such time as the contingent fund against which they are drawn has been reimbursed by the tax voted at your recent election.

You state further: "There was not enough contingent fund raised to pay outstanding orders and to run the township for a year. Has the township board the right to authorize the supervisor to spread any more contingent money than was voted at the spring election."

Answering the above question, I will quote the language used by Chief Justice Sherwood in the case of *Mills v. Township of Richland*, 72 Mich. 100 (106):

"The township had the power, and it was its duty, by a vote of the electors, to vote all sums necessary to pay its outstanding legal indebtedness, as well as all sums necessary to defray its ordinary expenses, not exceeding the sums limited by law. If the township shall refuse or neglect to vote, at the township meeting, the necessary sums to defray the ordinary expenses, the township board may at any regular meeting vote the necessary sums for that purpose."

However, the tax voted in any one year shall not exceed the sum of two thousand dollars.

With reference to your right to transfer \$248 from the good road fund into the contingent fund, I am of the opinion that if the township by vote authorized such action, such authorization would be sufficient. Although the statute is silent as to what fund the good roads commissioners should be paid from, it occurs to me that their compensation would be a proper charge against the good roads district fund.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

Mck-o.

SCHOOL LAW. RIGHT OF BOARD OF EDUCATION TO LEASE A BUILDING. It is the duty of the board of education to provide for the holding of school and may lease a building for that purpose.

June 15, 1911.

Mr. Richard M. Bates, Chairman, Board of Education, Hastings, Michigan:

Dear Sir—Relative to the right of the Board of Education to lease a building for the purpose of holding school where the regular school building has been condemned, would say that it is unquestionably the right of the board to lease a building for the purpose of having school conducted if for any cause it becomes impossible to hold school in the regular school building. It is the primary duty of the board of education to provide for the holding of a school and if as a condition precedent it becomes necessary to lease a building, then the board is possessed of that right. This has been the universal holding not only of this department but of the Superintendent of Public Instruction. I assume that the inquiry arises under the provisions of the general graded school law and if so, it is not subject to serious question.

However, in the leasing of a building the Board ought not act arbitrarily, if the voters are willing to have proper quarters leased. It would be proper for the Board to submit the proposition of leasing a building to the voters, and if a proper building is decided upon, the Board could be governed by that judgment. In case the voters refuse to consider the matter, or even though they decided against the proposition it is the duty of the Board to act.

The correspondence left at this office is returned herewith.

Yours respectfully,

FRANZ C. KUHN,
Attorney General.

L-m-o-encl.

OSTEOPATHIC BOARD. A high school or college diploma is prerequisite to admission to take an examination under Section 2 of Act 162 of the P. A. of 1903, if such high school or college is approved by the board.

The fact that a person completed a three-year Osteopathic course by reason of his advance standing and ability in less than three years would not render him ineligible to take the examination.

June 15, 1911.

Dr. W. H. Jones, Secretary, State Board of Osteopathic Registration,
Adrian, Michigan:

Dear Sir—You have submitted to this department several applications for permission to take the examination for registration as an Osteopath to be held in Detroit on June 15th, and request an opinion from this department as to whether the applicants possess the necessary qualifications. The facts relative to the particular cases are as follows:

No. 1. Attended Grand Rapids high school 1890 to 1893, has a certificate of entrance to any college or university in the State of Illinois, graduated in osteopathy three year course.

No. 2. No high school record, two-year diploma in osteopathy, graduated 1905.

No. 3. Quit high school at the end of third year, physical director Y. M. C. A., graduate in medicine Long Island Medical College, New York, 1897, studied osteopathy in Kirksville, Mo., from January, 1910, to June, 1911.

No. 4. Four years in Lansing high school, did not graduate, two years in Michigan Agricultural College, did not graduate, graduated, Kirksville, Mo., three-year course.

No. 5. Graduate Bath township high school, three-year course, Kirksville, Mo., in osteopathy.

No. 6. Ninth grade public school, graduate Central College of Osteopathy, Kansas City, Mo.

None of the applications come within the proviso of Section 2 of the osteopathic law. Section 2 of Act 162 of the Public Acts of 1903, requires an applicant for a certificate to state:

"First, his name, age—which shall not be less than twenty-one years—residence; Second, evidence that such applicant shall have previous to the beginning of his course in osteopathy a diploma from a high school academy, college or university approved by said board; Third, date of his diploma and evidence that such diploma was granted upon personal attendance and completion of a course of study of not less than three years of nine months each, and such other information as the board may require; Fourth, the name of the school or college of osteopathy from which he was graduated and which shall have been in good repute as such at the time of the issuing of his diploma as determined by the board."

It is our view that applications numbered 1, 2, 4, 5, and 6 do not comply with the second subdivision above quoted. While numbers one and four possess educational qualifications more than equivalent to a high school course, the statute does not authorize the board to accept

anything else than a diploma from an approved high school, academy, college or university. Number five states in his application that he is a graduate of Bath township high school. The records in the office of the Superintendent of Public Instruction show that Bath township has a graded school district but no high school is maintained and it does not carry instruction beyond the tenth grade. We are further advised that it is a rule of your board to accept high school diplomas only from schools on the accredited list of the university. This would of course exclude applicant number five.

So far as numbers 1, 2, 4, 5 and 6 are concerned, none of them show a completion of a high school, academic, college or university course, and we therefore think that you would be warranted in excluding them from the examination.

Number three states in his application that he is a graduate of Long Island Medical College. It is our view that you would be authorized to accept this as a proper qualification under subdivision two above quoted. The statement shows that he studied osteopathy in Kirksville, Mo. from January, 1910, to June, 1911, and graduated therefrom, and the question is raised as to whether his diploma can be said to have been "granted upon personal attendance and completion of a course of study of not less than three years of nine months each." We do not think that this provision of the statute requires personal attendance for the entire three years but that a person who receives advanced credit for work previously done in some other institution and who has been in personal attendance at the school and graduated therefrom in the three year course, would possess the necessary qualifications to take the examination, if the school is one recognized as a reputable school by your board. (Folsom vs. State Veterinary Board, 158 Mich. 277.)

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

Hi-m-o.

MICHIGAN RAILROAD COMMISSION. An ordinance of the city relative to the stationing of flagmen, electric bells and safety gates at railroad and street crossings is superseded by the provisions of Section 35 of Act 300 of the P. A. of 1909, creating the Michigan Railroad Commission and giving it exclusive jurisdiction over such matters. Other provisions of the ordinance not touching upon these subjects are not repealed by the act creating the Commission.

June 15, 1911.

Mr. Joseph F. Cuddy, City Attorney, Menominee, Michigan:

Dear Sir—I am in receipt of your letter of June 6th, enclosing copy of an ordinance passed by the City of Menominee on March 21, 1892, regulating railway companies and the running of railroad trains in the city and requesting an opinion as to whether or not certain provisions of this ordinance are not superseded by the provisions of Act 300 of the Public Acts of 1909, creating the Michigan Railroad Commission and providing for the regulation of railroads.

In reply will say that Section 35 of said Act 300 of the Public Acts

of 1909, provides in substance that whenever in the opinion of the Michigan Railroad Commission the safety of the public reasonably demands the stationing of a flagman to signal trains or cars where a highway or street is crossed by any railroad or street railway, or where one railroad or street railway crosses or intersects another railroad or street railway, or the building of a gate at such crossing, or the erection and maintenance of an electric alarm bell thereat, it shall direct the railroad or street railway to station a flagman, or to erect and maintain a gate or electric alarm bell at such crossings. It then provides that:

"That said Commission shall have jurisdiction over the subject matter of this Section to the exclusion of all other boards or officers, State or municipal."

So far as the provisions of the ordinance relate to the stationing of flagmen, electric bells and safety gates at railroad and street crossings, it is plain that under this provision of Section 35 of Act 300 of the Public Acts of 1909, the provisions of the ordinance are superseded by the State law.

Section 44 of said Act 300 of the Public Acts of 1909, provides as follows:

"The police powers of the State over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this State, shall be and the same are hereby vested in the Railroad Commission, and it is hereby made the duty of said Railroad Commission to exercise the same in accordance with the requirements of the law."

The scope of this provision of the Railroad Commission Act has never been passed upon by the courts of this State. I do not believe it can be said that its effect is to repeal all ordinances adopted by municipalities under authority of powers granted them by their charters. It is to be observed in this connection that Act 300 of the Public Acts of 1909, gives the Commission no jurisdiction over street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of five miles of the boundaries thereof (Subd. C, Section 3). As to other street railroads, interurban railways and railroads, I do not believe this provision does more than give the Commission jurisdiction to relieve against regulations and practices which the Commission, acting under the power conferred upon it by the act, finds to be unreasonable. It does not in my judgment ipso facto abrogate all ordinances passed by the several municipalities under their charter powers.

It is, therefore, my opinion that the provisions of the ordinance other than those relating to the stationing of flagmen at crossings and the installation of safety devices thereat are not abrogated by the provisions of Act 300 of the Public Acts of 1909.

Very respectfully yours,

FRANZ C. KUHN,
Attorney General.

La-m-o.

COUNTY ROAD SYSTEM. Townships bonding for State reward roads, after April 25, 1911, the date on which Act 168 of the Public Acts of 1911, took effect, are not exempt from taxation for roads built under the county road system nor are such townships entitled to a return of the county road tax paid by such townships to be applied upon the payment of the principal of county road bonds.

June 15, 1911.

Mr. William H. Andrews, Prosecuting Attorney, Benton Harbor, Michigan:

Dear Sir—Your letter of June 2nd received. Therein you state:

"The county of Berrien has adopted the County Road System, and I have been called upon for an opinion with reference to the construction to be placed upon Section 26 of Act No. 168 of 1911. The township of St. Joseph in this county, prior to the adoption of the County road system, built a number of State reward roads, and bonded therefor. Under the 1909 Act the board of supervisors of this county have been returning the taxes to that township. Now they desire to build additional State reward roads, and have called a meeting of the township board for the purpose of calling an election to vote upon the question of whether or not they shall so build additional State reward roads, and bond therefor. They have asked me for an opinion as to whether or not they are released by Section 26 of Act No. 168 from taxation for roads built under the county road system."

You say you have experienced some difficulty in construing the section referred to and ask me for my opinion of the situation.

Section 26 of Act 168 of the Public Acts of 1911, reads as follows:

"The adoption of the county road system in any county shall not prohibit any organized township from building State reward roads: Provided however, That the provisions of this act shall not apply to townships which have already bonded in good faith for the purpose of building roads under the provisions of section twenty-six of chapter four, act number two hundred eighty-three of the Public Acts of nineteen hundred nine, prior to the passage of this act."

The following language was eliminated from this section by the above amendment:

"With moneys raised by tax or bonding, and in townships where money has been raised by bonding to build State reward roads, the township clerk shall certify to the board of supervisors at the annual meeting thereof, the amount of such bonds remaining unpaid and the county road tax paid by such township shall be returned to the township each year to be applied in payment of the principal of such bonds until they are fully paid."

The portion of the statute enacted in 1909, as last above quoted is without question repealed by the amendment contained in Act 168 of the Immediate Effect Acts of 1911. As the portion thus repealed contains the provision for the returning of the county road tax paid by townships which have built State reward roads, to be applied upon the payment of the principal of the road bond, it is our view that town-

ships which bond for State reward roads after April 25, 1911, the date of the taking effect of Act 168, are not exempt from taxation for roads built under the county road system, nor are such townships entitled to a return of the county road tax paid by such townships, to be applied upon the payment of the principal of county road bonds.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

TAXATION. GAS COMPANIES. Assessment of personal property, and of property not necessary for the purpose of carrying on the business for which company was incorporated.

June 15, 1911.

Mr. Charles L. Robertson, City Attorney, Adrian, Michigan:

Dear Sir: Your letter of the 10th instant received and contents noted. You state that the Adrian Gas Company is a Michigan corporation having their corporate office at No. 9 North Winter Street in the first ward and that it maintains a salesroom and bookkeeping office in the third ward. That the supervisor in the first ward has assessed the full amount of their property to them in the first ward and the supervisor in the third ward has assessed to them the stock and appliances they have in the office in that ward.

In reply thereto would say that subdivision 16 of Section 8 of the general tax law expressly provides that the personal property of all gas companies is to be assessed in the assessment district where the principal works are located, the mains, pipes and wires to be assessed as personal property where the same are laid or placed. The only exception to the rule laid down for the assessment of personal property of gas companies in said subdivision 16 of Section 8 of the general tax law would be where the company was the owner of property not necessarily used by it for the purpose of carrying on the business for which it was incorporated, when it would come under the exceptions found in Section 14 of the general tax law and particularly subdivision one. In other words, the legislature has established a special rule for the assessment of the personal property of gas companies under subdivision 16 of Section 8 of the general tax law. This personal property generally is assessed in the assessment district where the principal works of a company are located. If the personal property of the Adrian Gas Company, located in the third ward of the city of Adrian is necessarily used in the carrying on of the business for which the company was incorporated, it should be assessed under subdivision 16 of Section 8 of the general tax law. If the business established in the third ward is not necessary for the purpose of carrying on the business for which the company was incorporated, it would be assessable under subdivision one of Section 14 of the general tax law.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o.

VILLAGE LAW. PETITION. RIGHT OF BOARD OF SUPERVISORS TO ACT. Board of supervisors can consider petition for re-incorporation of village only at a regular session or at a special session called for that purpose.

June 15, 1911.

Mr. George E. Lang, Carleton, Michigan :

Dear Sir—Your communication of June 8th, relative to the incorporation of the village of Carleton, directed to the Secretary of State, has been referred to this department. You state that a petition signed by one hundred legal voters has been filed with the county clerk and you ask if it will be all right and acceptable to have the board of supervisors which meets on June 19th, pass upon this petition and permit the question to be submitted to the voters in the territory to be affected.

In reply thereto would say it is assumed that your inquiry arises under Sections 2 to 4, inclusive, of Act 278 of the Public Acts of 1909. Said Section 4 requires that the petition "shall be filed with the clerk of said board not less than thirty days before the convening of such board in regular session, or in any special session called for the purpose of considering said petition," etc. It will be observed that such a petition as that to which you refer can be considered by the board of supervisors only at a regular session or at a special session called for that particular purpose. If the meeting on June 19th is a special meeting called for the purpose of considering this petition, it will be proper for the Board of Supervisors to consider same; otherwise the board has no authority to act.

Very respectfully,
FRANZ C. KUHN,
Attorney General.

L-m-o.

BINDER TWINE REVOLVING FUND. The Warden of the Jackson Prison is not entitled to be reimbursed for the premium on his official bond or upon the revolving fund bond.

June 15, 1911.

Hon. Nathan F. Simpson, Warden, Michigan State Prison, Jackson, Michigan :

Dear Sir—We are in receipt of your letter of June 12th, in which you inquire "Can the Board of Control authorize the payment of the Warden's bonds, both as to prison funds and the Binder Twine Revolving Fund?" You state:

"It has been customary for wardens to give a personal bond with the local banks as sureties but, contrary to previous customs, the writer paid his own bond, premium \$245.00, and requested from the banks two per cent on daily balances of deposits, which will amount to several times the amount of the premium above mentioned."

In reply thereto will say that Act 143 of the Public Acts of 1907 is the only authority by virtue of which an officer giving a surety company bond may be reimbursed. This section reads as follows:

"Whenever a bond is required by the laws of this State to be given by the Auditor General, Secretary of State, State Treasurer, Commissioner of the

State Land Office, Attorney General, or Superintendent of Public Instruction, or any officer of any State institution, whether elected or appointed, who is charged with the duty of being the custodian of any State or institution funds or money, but who does not receive any salary or compensation while acting in such capacity, such State or institution officer may procure the required bond from any surety company authorized by the laws of this State to execute same and the cost thereof not exceeding one per cent per annum shall be paid out of the treasury of the State of Michigan upon the warrant of the proper officer after being first allowed by the Board of State Auditors."

This provision as you will see precludes your reimbursement for the premium on your official bond and upon the revolving fund bond by reason of the fact that by the terms of Section 2099 of the Compiled Laws of 1897, as amended by Act 57 of the Public Acts of 1907, your office is a salaried office.

Under the provisions of Section 1200, Compiled Laws, it is provided:

"In all cases where public moneys are authorized to be deposited in any bank, or to be loaned to any individual, firm, or corporation, for interest, the interest accruing upon such public moneys shall belong to and constitute a general fund of the State, county, or other public or municipal corporation, as the case may be."

Under the provisions of this section the fact that the daily balances draw interest would not furnish any justification for the payment of the premium on the bond by the board of control of the State Prison.

Very respectfully yours,

FRANZ C. KUHN,

Attorney General.

Hi-m-o.

TAXATION. Specific tax on mortgages. Certifying on mortgage the amount of tax received. The county treasurer is not authorized to charge for certifying on a mortgage the amount of taxes received.

June 15, 1911.

Mr. Ward F. Doubleday, Kalamazoo, Michigan:

Dear Sir—Replying to your letter of the 14th instant would say that it is the view of this department that a county treasurer is not authorized to charge for certifying on a mortgage the amount of taxes received by him under Section 3 of Senate Enrolled Act No. 42 of 1911, which act provides for the assessment and collection of a specific tax upon mortgages, etc. The tax is payable to the county treasurer and he makes such certificate in lieu of tax receipt and there is no provision in the statute providing for compensation therefor. We do not think Act 173 of the Public Acts of 1903 is applicable.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

M-m-o.

TOWNSHIP ELECTION. ERECTION OF TOWN HALL. Where voters of township voted money for the purpose of erecting a town hall, township is not prohibited from borrowing money or issuing order.

June 15, 1911.

Mr. A. R. Massey, Supervisor, Cheboygan, Michigan :

Dear Sir—I have your communication of June 14th in which you state that at your last spring election your township voted \$400 for the purpose of erecting a town hall. You ask whether your board has a right to borrow this money, or if you can issue an order for \$160 to purchase a certain building and one acre of land.

In reply thereto would say my attention has not been called to any provision which would prohibit the board from borrowing money or issuing an order. The board, however, would have no right to pay any interest on the money so borrowed and neither would the time order bear interest. It would seem that if the owner of the land and building would take a time order for \$160 without interest to be paid after the taxes are collected, that this would be the preferable plan.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

L-k-o.

HIGHWAY. COUNTY ROAD SYSTEM. A township which adopted the township road system under Act 69, Public Acts of 1905, is bound by an action of the county in adopting the county road system.

June 29, 1911.

Mr. F. H. Harrison, Township Clerk, Conklin, Michigan :

Dear Sir—Your letter of recent date received. Therein you say:

“Chester township adopted the township road system in 1906 as provided in Public Acts of 1905, No. 69, and has builded roads under such system in good faith.

“Ottawa county at the spring election adopted the county road system of roads.

“Chester township voting unanimously against said system. Now then, the question is will Chester township be forced into the county system against our wish.”

In answer will direct your attention to Section 31 of Chapter 4 of Act 283, Public Acts of 1909, which reads as follows:

“Any township which may have adopted the township road plan provided for in Sections twenty-six and twenty-seven of Act number two hundred thirty of the Public Acts of eighteen hundred ninety-five, as originally set forth, and which has raised money and built roads in good faith, shall continue under such plan until by a majority vote of the electors of such township voting thereon, the township shall abolish such system; and while under such system they shall not, without their consent, be liable to any tax for a county road system, should the county in which such township is situated afterwards adopt the

county road system. No township in the State not now in operation under this township system shall adopt it."

It will be perceived that the saving clause contained in the provision just quoted applies only to townships which have adopted the township road system provided for in Section 26 and 27 of Act 230 of the Public Acts of 1895, as originally set forth. It would seem therefore that townships which adopted the township road system under the provisions of another act, would nevertheless be bound by the action of the county in which it is situated when such county has adopted the county road system.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

HIGHWAYS. Township board may cause highways to be constructed by day labor under the provisions of Act 118, Public Acts of 1911.

June 29, 1911.

Hon. Townsend A. Ely, State Highway Commissioner, Lansing, Michigan:

Dear Sir—Your letter of recent date received. Therein you say:

"In Section 3, Senate Enrolled Act 51, Public Acts 118, Laws of 1911, occurs the following proviso, which was added to Section 3, Chapter XII, Act 283, Laws of 1909:

"'Provided, however, That in case the township board shall decide to do the work by day labor, the plans and specifications, together with all bids thereon and the reason in writing for not letting the job by contract, shall be filed in the office of the township clerk.'

"I should like to be advised whether or not, in your opinion, this law really allows township officials to, after advertising for bids, etc., do certain work, such as building and repairing highways and bridges, by day labor, where the cost of such work is more than five hundred dollars, as mentioned in the preceding part of this section."

In reply will say that viewing the proviso in the light of the context of the whole section, it is my opinion that it means that if the township board by virtue of the supervisory control which it exercises over the highway commissioner, decides that the work shall be done by day labor, the commissioner shall then do or cause such work to be done according to the directions of said township board.

Yours respectfully,
FRANZ C. KUHN,
Attorney General.

Mc-k-o.

INDETERMINATE SENTENCE LAW. PAROLE. The Governor has no authority to recall a parole granted by the Advisory Board in the Matter of Pardons and order the convict returned to prison.

June 29, 1911.

Hon. Chase S. Osborn, Governor, Capitol, Lansing:

Dear Sir—I am in receipt of your communication of June 26th, in which you request an opinion as to the power of the Governor to recall a parole granted by the Advisory Board in the Matter of Pardons.

For reply thereto would say that the Advisory Board in the Matter of Pardons derives its authority to grant paroles to convicts confined in State prisons from Act 184, Public Acts of 1905, known as the indeterminate sentence law. Section 5 of that law confers upon the Governor exclusive authority to grant paroles in certain cases and in all other cases upon the Advisory Board in the Matter of Pardons. Section 8 of the act provides that every convict while on parole shall remain in the legal custody and under control of the warden or superintendent of the prison from which he is paroled and shall be subject at any time to be taken back to the prison for any reason that may be satisfactory to the warden or superintendent, and full power to take and return any convict is by the terms of the law expressly conferred upon the warden or superintendent and his decision in the matter is final unless reversed by a majority vote of the Advisory Board in the Matter of Pardons.

Under these provisions of the law I am of opinion that after a parole has been granted by the Advisory Board in the Matter of Pardons and the convict released upon parole, the only officer authorized to terminate the parole is the warden or superintendent of the prison from which the convict is paroled. The Governor cannot in my opinion, recall the parole and order the convict returned to prison.

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

La-k-o.

HIGHWAYS. A highway commissioner has no authority to expend the highway improvement fund except under the direction of the township board.

June 29, 1911.

Mr. James Mullin, Highway Commissioner, White Cloud, Michigan:

Dear Sir—Your letter of June 20th received. Therein you say that there were three special funds voted at your last election, one for repairing a road, one for building a bridge, and one for cutting a hill. You say the supervisor forbids you to do this work without the consent of the township board and that said supervisor refuses to call the board together. You ask if you have a right to do the work without the consent of the township board. Also if there is any law forbidding the highway commissioner to draw warrants for the full amount of the funds voted.

In answer I will direct your attention to Sections 10 and 11 of Chapter 2 of Act 283, Public Acts of 1909, which read, in part, as follows:

"The highway improvement fund shall be expended by the township highway commissioner, under the direction of the township board, in laying out, building and permanently improving or repairing highways and bridges and in the employment of labor, purchasing of materials, tools or machinery to be used therefor. The commissioner of highways, under the direction of the township board, may contract for such tools or road machinery as they may deem advisable, to be paid in not to exceed four years' time, but in no one year shall the payment made thereon, exceed one-fourth the amount of the allowable highway improvement tax. * * *

"It shall be the duty of the highway commissioner to see that all highways and bridges are kept in reasonable repair, and in condition reasonably safe and fit for public travel. He shall employ and direct the employment of such labor as he may deem necessary and advisable, and all disbursements from the highway improvement fund or the road repair fund shall be made upon his warrant, drawn on the township treasurer and countersigned by the township clerk."

It will be observed that the highway improvement fund can be expended by the township highway commissioner in the repairing and building of highways and bridges only under the direction of the township board. Therefore plainly you have no right to do any such work without the authority of the township board, even if said board is derelict in its duty in not meeting to consider the situation.

It is my understanding that the highway commissioner may draw warrants for the full amounts of the funds voted at election, but only under the direction of the township board. The township board is the only body having supervision over the township highway commissioner in the expenditure of township highway funds. The supervisor has no supervisory control over the township highway commissioner except in his capacity as a member of the township board.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

COUNTY AGENTS. The claim of a county agent for approving a home in which a child has been placed by an unincorporated institution should not be approved.

June 29, 1911.

Hon. Edward P. Kirby, Judge of Probate, Grand Haven, Michigan :

Dear Sir,—In your letter of June 13th you submit the following inquiries :

"When a child has been adjudged a neglected or a delinquent child and the court intends to place said child in a home, may I ask that you advise me as to whether the county or the person in whose home the child is placed pays the expense of the county agent, and also what the county agent would be entitled to.

"Also where a child from this county is being placed in a home in

Allegan county, which county agent makes the investigation and who pays the expenses."

In reply thereto will say that it is our view that these questions are governed by the provisions of Section 11 of the Juvenile Court Law, as amended by Act 310, Public Acts of 1909, which provides as follows:

"Any child found to be dependent, neglected or delinquent under this act shall not be indentured, apprenticed or otherwise disposed of, except as is herein provided, and in no case shall any child under the age of seventeen years be placed in any home by indenture, apprenticeship, adoption or on trial by any person, corporation or institution, without the written approval of the home where the child is so placed by the county agent of the county being filed with the probate judge of the said county. In the approval and investigation of homes as herein provided, the county agent shall be allowed his necessary expenses and per diem as is provided in the investigation of cases before the juvenile court, and said accounts shall be certified by the judge with whom the report is filed."

Under the provisions of this section the home should be examined by the county agent of the county in which the home is situated and the expenses should be paid by the board of State auditors on a voucher certified by the judge of the county in which the home is situated and with whom the report is required to be filed.

Very respectfully yours,

FRANZ C. KUHN,

Hi-k-o.

HOME RULE ACT. ELECTION OF JUSTICE OF THE PEACE. A Justice of the Peace may be placed upon a salary in any city the charter of which is revised under authority of the home rule act.

June 29, 1911.

Mr. B. T. Halstead, Member Charter Commission, Petoskey, Michigan:

Dear Sir—I have your communication of June 23rd, which reads in part as follows:

"In your opinion may cities now organized under the former laws, on making re-organization under the Home Rule Act,—Act 279, Public Acts of 1909,—provide for the election of one justice of the peace and place such officer on a salary instead of on a fee basis, as outlined in Section 33 of said act? Or does such section refer exclusively to cities newly organizing under said act?

In reply thereto would say the provision of the statute to which you refer provides in part:

"That the charter of any city may provide for placing any such justice of the peace on a salary instead of on a fee basis, and for the election of two such justices instead of one."

It will be observed that this section is not limited to any particular class of cities. It is, therefore, my opinion that the above-quoted lan-

guage refers not only to the charter of a city newly organized, but also to the charter of an existing city revised under authority of the Home Rule Act.

Yours very respectfully,

FRANZ C. KUHN,

Attorney General.

L-m-o.

RED CAN LAW. Kerosene cannot be delivered in red cans labeled "Gasoline."

June 29, 1911.

Mr. Frank C. Hart, Marine City, Michigan:

Dear Sir—Your letter of June 26th received. Therein you say:

"I wish to ask you for a little information regarding the gasoline law. I have a storage tank of kerosene oil in my warehouse for the purpose of supplying vessels with kerosene oil. Can I use red cans labeled "gasoline" for the purpose of carrying kerosene aboard boats and delivering the oil in their cans?"

In answer thereto I desire to call your attention to Section 1 of Act 37, Public Acts of 1909, which reads in part as follows:

"Every person dealing at wholesale or retail in gasoline, benzine or naphtha shall deliver the same from tank wagons, tanks, casks, barrels or other receptacles to the purchaser only in barrels, casks, jugs packages or cans painted vermilion bright red and having the word 'gasoline,' 'benzine' or 'naphtha' plainly lettered in English thereon, and all tank wagons and wholesale receptacles shall likewise be labeled with the word 'gasoline,' 'benzine,' or 'naphtha,' as the use of such tank wagon or receptacle would indicate. No such dealer shall deliver kerosene in a barrel, cask, jug, package or can painted and lettered as hereinbefore provided. Every person purchasing gasoline, benzine or naphtha for use or sale at retail shall procure and keep the same only in barrels, casks, jugs, packages or cans painted and lettered as hereinbefore provided. No person keeping for use or using kerosene shall put or keep the same in any tank wagon, barrel, cask, jug, package or can painted and lettered as hereinbefore provided."

Therefore you are expressly prohibited by the provisions of the above law from delivering kerosene oil in red cans labeled "gasoline."

Yours respectfully,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

VETERINARY SURGEONS. A person desiring registration as existing practitioners of veterinary medicine were required to apply for registration before January 1, 1908.

June 29, 1911.

Mr. E. E. Predmore, Orion, Michigan:

Dear Sir—Your letter of June 23rd, addressed to me personally, was duly received by me. I have also examined the letter which you sent to this office before and which was answered by Mr. McGill, my assistant.

I have carefully gone over the law providing for the registration of persons who desire to practice veterinary medicine and find that such registration can only be had through the Board, in accordance with the law as adopted by the legislature of 1907. We have nothing at all to do with reference to granting licenses and find that the Supreme Court in the case of Kerbs vs. State Veterinary Board, 154 Mich. 500, laid down the rule that the time fixed in the statute in which persons must apply for registration is not merely directory but mandatory and those who had not applied within the time fixed in the statute, to wit, January 1, 1908, could not be registered without complying with the qualifications required by the law. The only relief that I can see to those who are not qualified under the law to register is to go to the legislature.

Yours very truly,
FRANZ C. KUHN,
Attorney General.

Ku-m-o.

DRAIN LAW. TOWNSHIPS. Township is liable for a percentage of the cost of construction of a drain along a county road when said township is traversed by said drain and benefited thereby.

June 29, 1911.

Mr. Henry G. Reek, Prosecuting Attorney, Ludington, Michigan:

Dear Sir—Your letter of June 23d received. Therein you say:

"A question has arisen in this county as to whether the county drain commissioner in constructing drain along a county road can levy an assessment as benefit to the public health or as means of improving the highway upon the county at large or upon the county highway fund, or whether he is limited in such assessment to the township through which such road passes. * * * * *

"I find no place in the law which specifically authorizes such assessments to be paid from the county highway fund or allows them to be raised by a general tax upon the county at large. This county is operating under the county road system, and it occurs to me that for improvements to the county roads that the township through which it

passed would not be liable for such benefit. I would like to hear from you as soon as convenient, with your opinion."

In answer will refer you to Section 4 of Chapter 15 of Act No. 283 of the Public Acts of 1909, which reads, in part, as follows:

"The county drain commissioner shall apportion the percentum of the cost of construction of such drain which any township traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway, and he shall also apportion the percentum of benefits to accrue to any piece or parcel of land by reason of the construction of such drain, etc."

From a consideration of the foregoing it is my opinion that the county drain commissioner has a right to apportion the per cent of the cost of construction of a drain, which per cent any township shall be liable to pay by reason of being traversed by said drain and benefited thereby in the matter of health, convenience or welfare, or in the matter of the improvement of any highway therein.

It will be observed that the statute refers to any benefits accruing to the township by reason of the improvement of *any* highway. There is no distinction made between township and county highways. Therefore it is my view that the township is liable for a per cent of the cost of construction of a drain along a county road when said township is traversed by said drain and benefited thereby.

Respectfully yours,

FRANZ C. KUHN,

Attorney General.

Mc-k-o.

PUBLIC DOMAIN COMMISSION. Use of moneys, appropriated generally for the prevention and suppression of forest and prairie fires in the protection of the State Forestry Reserves from forest fires, etc.

June 29, 1911.

Hon. A. C. Carton, Secretary, Public Domain Commission, Lansing, Michigan:

Dear Sir—I am in receipt of your communication of the 27th instant in which you call attention to the provisions of Section 5, Act 317, Public Acts of 1907, and Sections 4 and 5 of Act 294 of the Public Acts of 1911, known as the Public Domain Commission Act, and request my opinion as to whether or not the Public Domain Commission can use all or a part of the \$10,000 appropriated annually under Section 5 of said Act 317 of the Public Acts of 1907 as an emergency fund in building fire lines, erecting necessary shelter for men and teams while doing this work or to be used in case of fire, taking the necessary and usual means to prevent the starting and spreading of fires in times like the present when conditions are dangerous in regard thereto. You also call attention to the fact that there is under the control of the Public Domain Commission about 230,000 acres of forestry reserve lands

distributed in 53 counties, that it is the duty of the Public Domain Commission to protect these reserves from forest fires, etc.

In reply thereto would say that the title of the act to which Act 317 of the Public Acts of 1907 makes certain amendments is, "An act to provide for the preservation of the forests of this State and for the prevention and suppression of forest and prairie fires." An appropriation of \$10,000 annually is made under Section 5 of said act to be expended under the supervision of the State Game, Fish and Forestry Warden for the purposes therein enumerated. An examination of said act clearly indicates that this appropriation was made for the purpose of preserving and protecting from fire the forests of the State and for the suppression of forest fires as well as prairie fires. There is nothing in the act to indicate that it was the intent of the Legislature in making this appropriation that the same should be used for the purpose of protecting solely the forests upon lands belonging to the State of Michigan, or which they might thereafter acquire, except as it might be incident to the general welfare of the State at large in the preservation of the forests of the State as outlined in said Act 317, Public Acts of 1907. The powers and duties which were originally given to the Forestry Commission seem to have been conferred upon the Public Domain Commission by the act of 1911, which under Act 175 of the Public Acts of 1903 included among other things the authority for establishing and maintaining fire lines and a system of fire control in the forestry reserve thereby created. Under Section 5 of Act 175 of the Public Acts of 1903 the Legislature appropriated annually the sum of \$7,500 for the purposes of carrying out the provisions of said act which would be available among other things for the protection of the forestry reserve lands from fires.

I also call your attention to Section 5 of Act 294 of the Public Acts of 1911, wherein the Legislature has expressly provided that the duties of the various officers named therein including the State Game, Fish and Forestry Warden "shall be as under the laws now in force or that may hereafter be in force," except that certain officers including the State Game, Fish and Forestry Warden shall be subject to the supervision and direction of said commission so far as wardens' duties pertain to fires and public lands. It would therefore follow that the appropriation of \$10,000 referred to should be expended for the purposes enumerated in the act of 1907 except as the State Game, Fish and Forestry Warden is subjected to the supervision and direction of the Public Domain Commission in the performance of his duties under the law. It cannot be urged from an examination of these acts that it was the intent of the Legislature to alter the purpose for which such annual appropriation of \$10,000 was made in the first instance. It is not my view that the law requires the Public Domain Commission or the State Game, Fish and Forestry Warden to wait until a fire has actually broken out before proceeding to act. The law seems to contemplate such action as circumstances may require with a view to protecting the forests of the State from fire. However, it is my opinion that the Legislature never contemplated the use of the appropriation found in Section 5 of Act 317, Public Acts of 1907, exclusively for the protection of the forests

upon State lands but rather that it could be used for such purpose only where it would be incident to the general welfare of the State along the line indicated. It is also my opinion that if the Public Domain Commission or the State Game, Fish and Forestry Warden, acting under its supervision, should use the greater portion of the moneys appropriated annually for the purposes indicated by the Act of 1907 in the protection of forestry reserve lands to an extent to jeopardize the interests of the State at large, there would be just cause for criticism of this action and such an expenditure would not be warranted by law. It is my view that the general spirit and intent of the Legislature as evidenced by the acts in question is quite plain as I have indicated and that no attempt should be made to use the annual appropriation referred to in the Act of 1907, except in such a way as to bring about the greatest protection to the State at large from forest or prairie fires.

Respectfully yours,

FRANZ C. KUHN,
Attorney General.

M-k-o.

SCHEDULE "M."

Abstract of the semi-annual reports of the Prosecuting Attorneys for the fiscal year ending June 30, 1911.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Nolle prossed.	Discharged on examination.	Settlements, etc., capes, etc.
Abandonment or desertion	679	124	35	14	24	464	18
Abduction of child	11		1		2	8	
Abortion	2	1	1				
Adultery	85	13	4	5	19	38	6
Animals:							
cruelty to	208	134	33	13	9	17	2
horse, overdriving	1	1					
horse, overdriving and speeding	6	3			3		
horse, unlawfully unhitching and driving away	7	3	2			2	
threatening and attempting to injure	1	1					
harboring vicious dog	6	5	1				
Annoyance by writing, malicious	5	2	2				
Arson	16	7	2		2	4	1
attempting to commit	3	1			2		
soliciting to commit	1		1				
Assault and battery	2,946	1,987	341	240	167	189	22
Assault and robbery	1	1					
Assault, felonious	99	32	10	3	15	36	3
Assault, simple	83	61	12	2	5	1	2
Assault with intent to commit indecent and improper liberty					1		
Assault with intent to commit murder or rape—See under "Murder" or "Rape."	1						
Automobile law, violation of—See motor vehicle.							
Banking law, violation of:							
Uttering false bank note	1		1				
Unclassified	1	1					
Bankrupt sale, unlawfully conducting	2		1	1			
Barbers' law, violation of:							
doing business without license	1	1					
not closing shop on Sunday	1	1					
unclassified	8	1				7	
Bestardy	226	38	3	20	22	49	94
Bicycle riding on sidewalk	57	5					
Bigamy	13	7			1	4	1
Blasphemy	1	1					
Boat, fastenings, breaking and removing	7	6			1		
Breaking and entering	6				4	2	
schoolhouse	1	1					
buildings, stores, factories, other than dwellings in daytime	7	5	1		1		
buildings, stores, factories, etc., other than dwellings in nighttime	72	54	6		5	7	
buildings, stores, factories, etc., other than dwellings with intent to commit felony	9	3				2	4
dwelling in the day time	15	12		1	1	1	
dwelling in the nighttime	17	14	2			1	
dwelling house with intent to commit felony	4	4					
Burglary	84	54	6	1	6	14	3
with explosives	5	5					

SCHEDULE "M."—Continued.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Not prosecuted.	Discharged on examination.	Settlements, escapes, etc.
Burglary.—Continued.							
attempt to commit	2	2					
in store or warehouse	8	6	1		1		
and larceny	21	18	1		1	1	
Chastity, imputing want of to a female	8	6	1	1			
Children:							
abandonment of	12	4			2	3	3
cruelty to	1	1					
violation of child labor law	2		2				
delinquency of contributing to	1	1					
Cigarette law, violation of	17	16	1				
Cohabitation, unlawful	1					1	
lewd and lascivious	31	23		4	2	2	
Concealed weapons, carrying	300	267	15	3	2	12	1
Conducting business under assumed name	3					3	
Conspiracy to defraud	4				1	3	
Conspiracy to murder	3	3					
Contempt of court	8	5	3				
Counterfeiting, passing counterfeit money, attempt to	1	1					
Crime, imputing to another	4	3	1				
Disorderliness, classified as:							
begging	18	18					
drunks	12,125	10,970	102	333	40	676	4
drunkard and tippler	212	209		1		1	1
drunkard and tippler, second offense	18	18					
drunkard and tippler, third offense	8	8					
fortune telling	1	1					
frequenting disreputable places	2	1	1				
lounging on railroad grounds	4	4					
non-support and leaving the state	1						
non-support of family	311	172	15	40	43	11	30
vagrancy	2,226	2,080	98	5	29	10	4
unclassified	932	876	34	55	15	11	1
Disorderliness, juvenile truancy	29	19	2	4	3	1	
Disposing of weapons and implements in Michigan State Prison	1		1				
Disposing of drugs, etc., in Michigan State Prison	1	1					
Drain obstructing	2	2					
Dynamite, unlawful use of to destroy the life of another	1		1				
Election laws, violation of:							
bribing voter	2					2	
unclassified	20	3				17	
illegal voting	2				2		
illegal registration	2					2	
Embezzling law, violation of	1	1					
Embezzlement	119	40	7	17	13	37	5
including larceny by conversion	9	5			2	2	
of contract property	17	7		9	1		
of mortgaged property	2	1		1			
by a public officer	1		1				
Entering without breaking, in daytime dwelling, building store, etc.	1	1					
garden or orchard and carrying away vegetables or fruit	6	6					
having burglarious tools in possession	4		4				
to commit crime, dwelling, in nighttime	1	1					
Enticing of female under sixteen years of age from home for marriage	1			1			

SCHEDULE "M."—Continued.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Nolle prossed.	Discharged on examination.	Settlements, escapes, etc.
Escape, aiding prisoner	3	2			1		
Exposure of person—See under indecency.							
Extortion	2		1		1		
False papers, uttering of	2	2					
False pretenses, classified as:							
obtaining signature by	1	1					
goods by	30	12	3	4	9	2	
money by	66	30	2	8	3	20	2
unclassified	98	40	9	10	22	15	2
Fighting	3	2				1	
Fire setting	5	5					
careless	4	2			1	1	
Forest, neglect of	7	6	1				
Firearms, aiming, careless use of, etc.	15	10	2	1	1	1	
accidental and careless shooting human being while hunting	2					2	
Fire escape, defective	1	1					
Forgery	106	86		3	2	10	5
attempted	3		1		2		
Fraud	7	0		1			
in advertising	2	1					1
water supply obtained by	1	1					
Fugitive from justice	11	1					10
Game, fish and forestry law, violation of, classified as:							
song birds, killing	4	4					
deer, killing out of season	6	4	2				
in spotted coat, having in possession	1					1	
fish, having possession under size, unlawful	8	6				2	
taking trout otherwise than with hook and line	1	1					
brook trout, less than 8 inches	2	2					
spearing	29	28	1				
having more than 100 brook trout in possession	1	1					
fishing illegally or out of season	49	44	3		2		
in inland lakes with nets	3	2	1				
black bass in possession out of season	25	22	1		1		1
with set lines or trap nets	10	9	1				
with nets	4	2	2				
obstructing fish grounds	6	5				1	
illegal fish, undersized, selling	12	12					
having more than ten bass in one day	2	2					
killing game out of season or illegally	2			2			
muskrat, killing out of season	2	2					
muskrat trapping and molesting, etc.	5	5					
quail or partridge, killing or capturing out of season	1	1					
trailing dogs on out of season	2	2					
rabbits, killing by use of ferrets	16	13	3				
beaver, skins in possession, closed season	3	2					1
squirrel, killing out of season	1	1					
squirrel, trapping, setting traps	15	15					
venison, having in possession	4	3	1				
venison, shipping out of state	1	1					
unclassified	365	297	11	30	13	11	3
Gaming	44	38	5			1	
keeping gaming room, devices, etc.	31	27		2		2	
keeping slot machines, etc.	1	1					
Gasoline law, violations of	1		1				
Hawkers and peddlers law, violations of, classified as:							
peddling without a license	7	6	1				
unclassified	1	1					

SCHEDULE "M."—Continued.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Not prosecuted.	Discharged on examination.	Settlements, escapes, etc.
Health law, violations of, classified as:							
carcass of animal, leaving unburied	2	2					
aiding and spreading dangerous communicable diseases	1	1					
unclassified	5	3			2		
Highway law, violation of	1	1					
Horses, offenses against—See under animals.							
Hotels, boarding houses, etc., law for protection of keepers of, violations of classified as:							
defrauding hotel keeper, etc.	296	188	13	50	8	21	16
intent to defraud hotel keeper	7	6					1
unclassified	61	40	6	7	5	2	1
Incest	6	6					
Indecency, classified as follows:							
crime against nature	3	2				1	
exposure of person	32	22	2	4	1	3	
language in presence of women and children	282	218	17	18	20	9	
liberties	8	5	1				
with female child	22	10	2	1	2	6	2
pictures, exposing of	5	5					1
gross lasciviousness	7	5	1			1	
unclassified	2	2					
Injury by writing, malicious	3	3					
Insulting language, using	30	24	2	2	1	1	
Insurance law, violation of:							
burning building to obtain insurance	2	1	1				
Jail breaking	4	3				1	
conveying tools into and assisting	1	1					
Kidnapping	1					1	
Labor law, violation of:							
factory law, violation of	6	3				3	
unclassified	4	3		1			
Language, insulting—See insulting language:							
Language, bad, on public telephones	3	3					
Larceny, classified as:							
attempted	27	12	2		3	10	
from building, railroad car, store, etc.	19	16				3	
from building, store, office, in daytime	25	19	3			3	
from dwelling	13	9				2	
from dwelling in daytime	26	23				3	2
in nighttime	1	1					
from the person	80	45	6	1	6	22	
from the person, attempt to commit	1		1				
in a building, store, shop, etc., in daytime	2	2					
in a dwelling in the daytime	34	27				7	
of electric light by tapping wires	5	4				1	
of gas	3	3					
of ginseng	2	1	1				
personal property	39	26	2	4	7		
of a cow	1	1					
of a horse	7	6	1				
timber	3	1		1	1		
by conversion	46	9	5	2		30	
by trick	3	2				1	
simple	1,663	1,234	168	78	49	130	4
grand	184	93	15	9	8	59	
compound	1	1					
unclassified	645	440	70	39	54	30	12
juvenile	1	1					
Liquor laws, violations of, classified as:							
keeping saloon open after hours	19	7	3		3	6	

SCHEDULE "M."—Continued.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Nolle prossed.	Discharged on examination.	Settlements, escapes, etc.
Liquor laws—violations of.—Continued.							
on legal holiday	13	4	1		2	6	
on Sunday	223	46	27	1	16	133	
not filing bond	12	5			1	6	
obstructing view of bar	9	2			2	5	
furnishing liquor to drunkards	7	6				1	
selling liquor without having paid license	36	16	2	2	9	7	
druggist, selling liquor without registering	2	2					
selling liquor, to Indians	14	14					
to prisoner	1	1					
after having been forbidden	1	1					
allowing girls to frequent saloon	1	1					
unclassified	93	52	21	4	5	9	2
establishing a bar within 400 feet of a church	2		1		1		
Livery keepers' law, violations of	13	8		2	2		1
defrauding livery keeper	21	13		2		4	2
Local option law, violations of	232	161	16	12	34	52	7
Lotteries—See under gaming.							
Manslaughter	18	6	6		1	5	
Marriage law, violations of	1	1	1				
Mayhem	4	1				3	
Medical law, violations of, classified as:							
practicing medicine without license	8	3	2		1	2	
unclassified	4	2	1			1	
Milk adulteration—See under Pure Food laws.							
Minors, billiard or pool room:							
allowing to remain in	12	9	2			1	
houses of prostitution, allowing to remain in	1	1					
liquor, furnishing to	9	7	1		1		
liquor, selling to	22	8	1		5	8	
tobacco, cigarettes, etc., smoking, selling to	49	39	1	3	4	2	
firearms, explosives, selling to	2	2					
stolen goods, junk, purchasing from	6	5				1	
Misdemeanor	3	3					
Misrepresentation	1			1			
Mortgage law, violations of	3			1	1	1	
Monuments in cemeteries—See under property.							
Motor vehicle law, violations of:							
cycle speeding	34	22				2	
not displaying lights	50	41	2		2	5	
not having number	6	3	1			2	
not displaying number	52	31	7	1	1	12	
automobile company, defrauding	7					7	
automobiles, unlawful driving away	26	15	1	1	3	6	
speed limit violation	847	697	45	56	6	43	
unclassified	509	474	19	5	5	6	
Murder classified as follows:							
assault with intent to	45	30	4		3	7	1
attempt to	2	1				1	
first degree	13	4	6		1	2	
second degree	4	4					
threats to murder	5	5					
manslaughter—See under manslaughter.							
unclassified	31	17	8		3		3
Noxious weed law, violations of	1	1					
Nuisance, maintaining, unlawfully keeping a slaughter house	1	1					

SCHEDULE "M."—Continued.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Nolle prossed.	Discharged on examination.	Settlements, escapes, etc.
Nuisance.—Continued:							
committing.....	1	1					
Office, malfeasance in.....	1			1			
Officers, offenses against:							
assaulting.....	3	1	1		1		
impersonating.....	1					1	
resisting and obstructing.....	32	14	3	1	2	12	
Oil inspection law, violations of.....	1	1					
Ordinances:							
city, violations of.....	27	24	3				
village.....	41	38	2	1			
sidewalk ordinance, township.....	6	5	1				
fast driving.....	2	2					
Parole, violation of.....	1	1					
Pawnbrokers' law, violation of:							
without license.....	1	1					
Peace, breach of, etc.....	14	11	2		1		
exciting disturbance, etc.....	136	122	4	4	6		
surety to keep.....	38	25	7		2	1	3
affray.....	11	7			2	2	
Peddling without license—See hawkers and peddlers' law.							
Perjury.....	19	8	3			8	
Pharmacy law, violations of.....	3		1		1	1	
Plumbing law, violations of.....	17	8				9	
Poison, exposing of with intent to kill animals.....	1	1					
mingling with food with intent to kill cows.....	6	3	1		2		
poisoning animals.....	3		2			1	
Polygamy.....	1	1					
Profanity.....	16	16					
Property, offenses against, classified as:							
destroying maliciously.....	65	41	8	4	6	2	4
injuring maliciously.....	65	33	6	2	5	19	
chattel mortgaged, disposing of.....	22	1		18	1		2
disposing of fraudulently.....	1						1
removing of.....	7	1			1	4	1
removing of fraudulently.....	2			1			1
contract act, violation of, disposing of fraudulently.....	8	4		2		1	1
leased disposing of.....	2			2			
personal, destroying.....	8	8					
destroying maliciously.....	16	13		2	1		
injuring.....	2	2					
injuring maliciously.....	5	5					
real, injury to.....	1	1					
malicious injury to.....	9	7		1	1		
dwelling.....	2	1					
fence.....	2					2	
wanton destruction of shade trees.....	2	2					
damaging public property.....	1	1					
stolen.....	1						
receiving stolen.....	24	15	5		4	10	
Prostitution.....	12	12					
common prostitutes.....	316	222	75	4	3	11	1
permitting female child under 17 years to remain in house of.....	2	2					
keeping house of ill-fame, bawdy house, etc.....	49	32	5	1	6	4	1
inmate of house of ill-fame.....	16	14			2		
procuring females for prostitution.....	1				1		
renting for immoral purposes.....	2	1					1
Public records, stealing.....	1				1		
Public meeting, disturbing.....	4	4					
Public school, disturbing.....	1	1					

SCHEDULE "M."—Concluded.

Offenses charged.	Prosecuted.	Convicted.	Acquitted.	Discharged on payment of costs.	Nolle prossed.	Discharged on examination.	Settlements, escapes, etc.
Pure food law, violation of, classified as:							
diseased meat, selling	1		1				
milk adulterating and selling	31	21	3		6	1	
unclassified	11	7	3		1		
Quarantine law, violations of	7	2	3	2			
Railroad law, violation of							
boarding a moving train	123	123					
entering a freight car to obtain carriage unlawfully	30	29	1				
breaking and entering freight car	27	19			5	3	
breaking and entering depot in daytime	1	1					
attempt to wreck train, putting obstructions on track	2				2		
trains, jumping on, stealing ride on, etc.	62	42	1		1	2	16
trains, exciting disturbance on, etc.	6	6					
trains, throwing missiles at	12	11				1	
unclassified	7	5	1	1			
Rape:							
assault with intent to commit	31	18	2	2	2	7	
carnal knowledge of female under 16 years of age	29	15	8		2	2	2
statutory	93	53	11	1	13	14	1
Religious meeting, disturbing	14	14					
Robbery, classified as:							
from person	3		1	1		1	
highway robbery	10	8			1	1	
armed	4	3				1	
unarmed	12	7				5	
assault with intent to	12	8			3	1	
attempt to commit	1	1					
unclassified	19	6	4		5	4	
School law, violations of, classified as:							
not sending children to school	147	107	4	8	19	7	2
not furnishing text-books to children	1	1					
unclassified	70	60	2	4	4		
Search warrant	49	6	38				5
Seduction	16	2	1		4	4	5
Sheep killing dog, harboring	2	2					
Shooting dog	1		1				
Slander, criminal	158	64	35	30	7	20	2
Sodomy	2	1	1				
attempt to commit	2	2					
Sunday law, violations of, classified as:							
keeping places of business, vaudeville open on Sunday	1		1				
hunting on Sunday	7	7					
unclassified	2	1			1		
Tapping electric light wires—See under larceny.							
Tax law, violation of:							
refusing and neglecting to make statement regarding taxable property	2	2					
Threats, malicious to do bodily harm, etc.	55	14	9	4	11	15	2
Traction engine law, violation of	1			1			
Trespass, classified as:							
on State lands	7	3			2	2	
in dwelling	2		1	1			
hunting on land without permission	11	8	3				
on fruit lands	6	2	1		3		
unclassified	17	9	2		6		
Union label law, violation of	7	4				3	
Veterinary law, violation of	5	4	1				
Total	30,556	23,882	1,570	1,242	933	2,596	331

SCHEDULE "N."
Recapitulation of the semi-annual reports of the Prosecuting Attorneys for the fiscal year ending June 30, 1911.

Counties.	Number prosecuted.			Number convicted.			Number acquitted.			Number dismissed on payment of costs.			Number nolle prossed.			Number discharged on examination.			Number settled, etc.		
	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.	First half.	Second half.	Total for year.
Alcona.....	18	11	29	13	9	22	2	1	3	9	17	26	1	1	2	1	1	2	3	2	3
Alger.....	53	40	93	114	22	136	2	1	3	7	1	8	1	3	4	3	2	5	5	2	7
Algon.....	126	196	322	280	12	292	2	4	6	2	5	7	4	4	8	10	1	11	2	3	5
Albion.....	50	29	79	30	12	42	2	2	4	2	7	9	4	1	5	3	1	4	3	2	5
Antrim.....	21	24	45	16	19	35	1	1	2	2	2	4	4	1	5	1	1	2	2	3	5
Arenac.....	18	11	29	18	10	28	3	1	4	3	3	6	1	1	2	2	2	4	1	1	2
Baraga.....	57	43	100	49	41	90	3	3	6	3	3	6	17	5	22	4	4	8	5	3	8
Barry.....	85	33	118	60	21	81	32	48	80	5	2	7	6	8	14	21	7	28	6	14	20
Bay.....	420	399	819	350	330	670	5	2	7	3	3	6	1	2	3	3	1	4	2	2	4
Benaue.....	35	14	49	26	8	34	106	53	158	10	13	23	9	1	10	19	3	22	3	3	6
Berrien.....	409	276	685	284	208	492	3	1	4	6	12	18	4	10	14	19	3	22	3	3	6
Branch.....	40	25	65	72	31	103	8	9	17	45	12	57	61	12	73	10	3	23	3	3	6
Calhoun.....	186	240	426	231	281	512	2	7	9	18	18	36	4	10	14	19	3	22	3	3	6
Cass.....	124	187	311	99	149	248	2	7	9	4	4	8	1	1	2	3	1	4	1	1	2
Charlevoix.....	19	25	44	19	20	39	1	3	4	1	1	2	20	14	34	3	1	4	1	1	2
Cheboygan.....	91	63	154	88	56	144	1	13	14	3	3	6	1	1	2	2	3	5	2	2	4
Chippewa.....	82	87	169	57	57	114	1	1	2	1	1	2	2	2	4	3	1	4	2	2	4
Charlevoix.....	18	21	39	17	20	37	1	1	2	1	1	2	2	2	4	3	1	4	1	1	2
Clinton.....	23	27	50	23	26	49	2	2	4	1	1	2	3	3	6	3	3	6	1	1	2
Crawford.....	44	36	80	39	29	68	3	9	12	27	1	28	8	13	21	9	9	18	3	3	6
Dela.....	132	84	216	114	50	164	3	3	6	14	4	18	2	7	9	3	13	16	3	3	6
Dickinson.....	100	283	383	155	287	442	5	3	8	5	4	9	10	7	17	3	1	4	1	1	2
Easton.....	198	270	468	175	264	439	3	3	6	5	4	9	4	4	8	25	27	52	2	2	4
Emmet.....	27	52	79	35	42	77	1	1	2	25	13	38	7	3	10	25	27	52	10	10	20
Genesee.....	230	223	453	162	180	342	3	7	10	18	20	38	4	11	55	2	1	3	2	2	4
Gladwin.....	16	25	41	12	19	31	2	2	4	3	3	6	4	4	8	1	1	2	1	1	2
Gogebic.....	434	366	800	367	327	694	2	1	3	2	2	4	5	5	10	25	1	26	4	6	10
Grand Traverse.....	69	27	96	66	24	90	2	1	3	1	1	2	1	1	2	1	1	2	1	1	2
Grand.....	92	63	155	61	48	109	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2
Gratiot.....	80	73	153	80	70	150	1	1	2	1	1	2	1	1	2	1	1	2	1	1	2

SCHEDULE "O."

List of Prosecuting Attorneys, June 30, 1911, with names of county seats and postoffice addresses.

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Alcona.....	Harrisville.....	John A. Stewart.....	Harrisville.
Alger.....	Munising.....	Henry B. Freeman.....	Munising.
Allegan.....	Allegan.....	Ethol W. Stone.....	Allegan.
Alpena.....	Alpena.....	Fred P. Smith.....	Alpena.
Antrim.....	Bellaire.....	Thomas D. Meggison.....	Central Lake.
Arenac.....	Standish.....	B. J. Henderson.....	Standish.
Baraga.....	L'Anse.....	Joseph J. O'Connor.....	L'Anse.
Barry.....	Hastings.....	William W. Potter.....	Hastings.
Bay.....	Bay City.....	Charles W. Hitchcock.....	Bay City.
Benzie.....	Honor.....	Marion G. Paul.....	Thompsonville.
Berrien.....	St. Joseph.....	William H. Andrews.....	Benton Harbor.
Branch.....	Coldwater.....	W. Glenn Cowell.....	Coldwater.
Calhoun.....	Marshall.....	Robert H. Kirschman.....	Battle Creek.
Cass.....	Cassopolis.....	Asa K. Hayden.....	Cassopolis.
Charlevoix.....	Charlevoix.....	Dwight H. Fitch.....	East Jordan.
Cheboygan.....	Cheboygan.....	David H. Crowley.....	Cheboygan.
Chippewa.....	Sault Ste. Marie.....	Mervin M. Larnmonth.....	Sault Ste. Marie.
Clare.....	Harrison.....	Joseph H. Bowler.....	Clare.
Clinton.....	St. Johns.....	Edward J. Moinet.....	St. Johns.
Crawford.....	Grayling.....	Frank G. Walton.....	Grayling.
Delta.....	Escanaba.....	Torval E. Strom.....	Escanaba.
Dickinson.....	Iron Mountain.....	Robert C. Henderson.....	Norway.
Eaton.....	Charlotte.....	Russell R. McPeck.....	Charlotte.
Emmet.....	Petoskey.....	Wade B. Smith.....	Petoskey.
Genesee.....	Flint.....	James S. Parker.....	Flint.
Gladwin.....	Gladwin.....	Gottlob C. Leibrand.....	Beaverton.
Gogebie.....	Bessemer.....	James A. O'Neill.....	Ironwood.
Grand Traverse.....	Traverse City.....	Fred H. Pratt.....	Traverse City.
Grafton.....	Ithaca.....	Charles G. Goggin.....	Alma.
Hillsdale.....	Hillsdale.....	Paul W. Chase.....	Hillsdale.
Houghton.....	Houghton.....	William J. MacDonald.....	Calumet.
Huron.....	Bad Axe.....	Xenophon A. Boomhower.....	Bad Axe.
Ingham.....	Mason.....	Charles H. Hayden.....	Lansing.
Ionia.....	Ionia.....	Dwight C. Sheldon.....	Ionia.
Iosco.....	Tawas City.....	Albert W. Black.....	East Tawas.
Iron.....	Crystal Falls.....	Martin S. McDonough.....	Iron River.
Isabella.....	Mt. Pleasant.....	Roy D. Matthews.....	Mt. Pleasant.
Jackson.....	Jackson.....	Nathan E. Bailey.....	Jackson.
Kalamasoo.....	Kalamasoo.....	George V. Weimer.....	Kalamasoo.
Kalkaska.....	Kalkaska.....	Ernest C. Smith.....	Kalkaska.
Kent.....	Grand Rapids.....	William B. Brown.....	Grand Rapids.
Keweenaw.....	Eagle River.....	James A. Hamilton.....	Ahmeek.
Lake.....	Baldwin.....	Hal L. Cutler.....	Luther.
Lapeer.....	Lapeer.....	Herbert W. Smith.....	Lapeer.
Leelanau.....	Leland.....	John O. Duncan.....	Suttons Bay.
Lenawee.....	Adrian.....	Earl C. Michener.....	Adrian.
Livingston.....	Howell.....	William E. Robb.....	Howell.
Luce.....	Newberry.....	Louis H. Fead.....	Newberry.
Mackinac.....	St. Ignace.....	Henry Hoffman.....	St. Ignace.
Macomb.....	Mt. Clemens.....	Charles H. Hummrich.....	Halfway.
Manistee.....	Manistee.....	Charles J. Dovel.....	Manistee.
Marquette.....	Marquette.....	Frank A. Bell.....	Negaunee.
Mason.....	Ludington.....	Henry G. Reek.....	Ludington.
Mecosta.....	Big Rapids.....	Arthur J. Butler.....	Big Rapids.
Menominee.....	Menominee.....	Fred H. Haggerson.....	Menominee.

SCHEDULE "O."—Concluded.

Counties.	County seat.	Prosecuting attorneys.	Postoffice.
Midland.....	Midland.....	Myron J. Gue.....	Midland.
Missaukee.....	Lake City.....	Henry Miltner.....	Lake City.
Monroe.....	Monroe.....	James H. Root.....	Monroe.
Montcalm.....	Stanton.....	Charles B. Rarden.....	Stanton.
Montmorency.....	Atlanta.....	Elmer G. Smith.....	Atlanta.
Muskegon.....	Muskegon.....	Alexander Sutherland.....	Muskegon.
Newaygo.....	White Cloud.....	William J. Branstrom.....	Fremont.
Oakland.....	Pontiac.....	Carl H. Pelton.....	Pontiac.
Oceana.....	Hart.....	Frank E. Wetmore.....	Hart.
Ogemaw.....	West Branch.....	George Bennett.....	West Branch.
Ontonagon.....	Ontonagon.....	John Jones.....	Ontonagon.
Osceola.....	Hersey.....	B. Newton Savidge.....	Reed City.
Oscoda.....	Mio.....	John Caldwell.....	Mio.
*Oshtego.....	Gaylord.....	Wirt Barnhart.....	Gaylord.
Ottawa.....	Grand Haven.....	Louis H. Osterhaus.....	Grand Haven.
Presque Isle.....	Rogers.....	George A. Morris.....	Onaway.
Roscommon.....	Roscommon.....	Henry H. Woodruff.....	Roscommon.
Saginaw.....	Saginaw.....	Clarence M. Browne.....	Saginaw, W. S.
Sanilac.....	Sandusky.....	H. O. Babcock.....	Sandusky.
Schoolcraft.....	Manistiquie.....	Virgil I. Hixson.....	Manistiquie.
Shiawassee.....	Corunna.....	Joseph H. Collins.....	Corunna.
St. Clair.....	Port Huron.....	Thomas H. George.....	Port Huron.
St. Joseph.....	Centerville.....	George H. Arnold.....	Three Rivers.
Tuscola.....	Caro.....	Timothy C. Quinn.....	Caro.
Van Buren.....	Paw Paw.....	Glenn E. Warner.....	Paw Paw.
Washtenaw.....	Ann Arbor.....	George J. Burke.....	Ann Arbor.
Wayne.....	Detroit.....	Philip T. Van Zile.....	Detroit.
Wexford.....	Cadillac.....	William H. Yearad.....	Cadillac.

*Albert M. Hilton, died July 11, 1910; Willis L. Townsend held the office afterwards until January 1, 1911.

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